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In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 513

STATE OF ALABAMA AND ALABAMA PUBLIC SERVICE COMMISSION, appellants

v.

UNITED STATES, INTERSTATE COMMERCE COMMISSION, et al., appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

OPINIONS

The specially constituted District Court (Circuit Judges Walker and Foster and District Judge Grubb) filed no written opinion, but on February 14, 1928, filed an "order denying application for interlocutory injunction." (R. 230.)

On appeal this Court, on April 8, 1929, held (279 U. S. 229, 230, 231) that, no abuse of discretion on the part of the court below in denying the inter-

locutory injunction having been shown, the case should be remanded to the District Court for final hearing. In its opinion this Court further held that the order of the Commission sought to be set aside was within the "general powers" of the Commission and was made by it after "full inquiry."

In June, 1930 (14 months after this Court's opinion), the case came on for final hearing before Circuit Judge Bryan and District Judges Sibley and Borah (R. 233), and on July 2, 1930, the opinion of that Court was filed. (R. 233.) The final decree dismissed the bill of complaint. (R. 232.) The opinion of the District Court on final hearing (R. 233) is reported in 42 Fed. (2d) 469.

The reports of the Commission appear as Docket No. 16295, *Fertilizers and Fertilizer Materials between Southern Points*, 113 I. C. C. 389 (R. 32-99); 123 I. C. C. 193 (R. 125-128); 129 I. C. C. 215 (R. 135-139).

JURISDICTION

The direct appeal to this Court from the final decree entered June 25, 1930 (R. 232), was allowed August 21, 1930 (R. 237). The suit was brought to set aside a certain order of the Interstate Commerce Commission dated October 3, 1927 (R. 3), and the jurisdiction of this Court on direct appeal rests on the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 219, 220), and Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (U. S. C. Title 28, Sec. 47).

QUESTION

In a proceeding instituted upon its own motion, and consolidated and heard with other proceedings begun by complaint of private parties, the Interstate Commerce Commission issued orders requiring, principally, (1) that certain common carriers, subject to its jurisdiction, operating in Alabama and other southeastern states, cease publishing their existing interstate carload rates for transportation of fertilizer and fertilizer materials between all points in specified territory and to publish and charge rates not in excess of those prescribed therein by the Commission as reasonable; (2) that such carriers operating into and through Alabama cease practicing the undue discrimination against interstate commerce and the undue prejudice against persons and localities in interstate commerce found by the Commission to exist because of the relation of interstate and intrastate rates for the transportation of fertilizers and fertilizer materials, in carloads within the State of Alabama; (3) and that the discrimination and prejudice be removed by publishing on those commodities moving within that State intrastate rates which should be not less, for corresponding distances, than the interstate rates therein prescribed.

The question is whether the orders are invalid (1) for lack of authority in the Commission to increase all the intrastate rates to remove said unjust discrimination and undue prejudice found by it to

exist, and (2) for lack of substantial support in the evidence.

THE STATUTE

Pertinent provisions of the Interstate Commerce Act (24 Stat. 379), as amended by the Transportation Act of 1920 (41 Stat. 456), are:

SEC. 3. (1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (24 Stat. 379, 380.)

SEC. 13. (3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, * * * there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, * * * the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate

structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, * * * to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act. (41 Stat. 456, 484.)

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations,

and practices shall be observed while in effect by the carriers parties to such proceedings affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding. (41 Stat. 456, 484.)

SEC. 15a. (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish, or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate annual net railway operating income, equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such

determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity under honest, efficient, and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: * * *. (41 Stat. 456, 488.)

SEC. 14. (1) That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

STATEMENT

Facts leading up to the Commission's finding of July 19, 1926 (R. 32; 96)—made in a proceeding involving reasonableness of rates on fertilizer and fertilizer materials in the territory south of the Potomac and Ohio rivers and east of the Mississippi River—that the maintenance of intrastate rates in Alabama on the commodities mentioned on a lower basis than the corresponding rates found reasonable for interstate application, results in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce, which finding was made effective by order of October 3, 1927 (R. 23) will now be briefly

reviewed. Before doing so, however, it is well to call the Court's attention to the facts that the District Court, on preliminary and final hearings (6 judges concurring) have upheld the validity of the order of October 3; that this Court has held that said order was within the "general powers" of the Commission and made after "full inquiry" (*Alabama* v. *United States*, 279 U. S. 229); and that the interstate rates as prescribed by this Commission in its order of July 19, 1926, have been made effective for intrastate application in the states of Kentucky, Tennessee, North Carolina, and Georgia, and, with certain minor exceptions, in Virginia and South Carolina.[1] (R. 180–1.) Since transportation conditions throughout Southern Territory were such that one uniform level of rates for interstate and intrastate transportation was desirable, as contended for by practically all parties of record (R. 76), and as fertilizer factories are scattered all over

[1] Since the Commission's decision in the *Fertilizer Investigation*, 113 I. C. C. 389, it has stated in Docket 16330, *Fertilizer Rates in South Carolina*, 147 I. C. C. 178, decided October 2, 1928, that (p. 179) on November 9, 1927, the South Carolina Commission authorized the carriers to establish, intrastate, the scale of rates the Federal Commission had prescribed in the *Fertilizer Investigation*, *supra*, with the exception that the rates were made subject to a carload minimum of 30,000, instead of 40,000 pounds. In the report, 147 I. C. C. 183, 184, the Interstate Commerce Commission found that a carload minimum of 30,000 pounds applicable intrastate in South Carolina would result in unjust discrimination against interstate commerce, and required the 40,000 pounds minimum to be established.

the South and are actively competing in the sale of fertilizer (R. 815–816), this comprehensive establishment and acceptance of the Commission's interstate rates has a distinct bearing as showing they are just and reasonable rates necessary to remove the discrimination against interstate commerce and against persons and localities therein, which is forbidden and declared to be unlawful by the Act.

In 1921 the Alabama Commission instituted an investigation into the reasonableness of all freight rates intrastate in that State, to which investigation the steam railroads operating in Alabama were made parties. As a result of this investigation the steam railroads operating in Alabama prescribed two scales of mileage rates applicable on carload movements of fertilizers and fertilizer materials moving intrastate over railroad lines within the State, one scale being for single-line, and the other for joint-line, application, and also prescribing rates on fertilizer and fertilizer materials moving in less than carload quantities. (R. 3–4.) Reasons prompting the Alabama Commission to promulgate the scales mentioned were stated by their witness Alldredge in his testimony before the Interstate Commerce Commission in the instant proceeding as follows:

> Agriculture has been in the past and still is the basic industry of the South, and fertilizer is an indispensable asset of the agri-

cultural industry. It is a vital factor in agricultural production. After considering these important facts and all other pertinent facts, both commercial and transportation surrounding the movement of fertilizer in this section, the Alabama Commission reached the conclusion in the case before it that it would be economically sound, in the general reorganization of our rate structure, of which the revision of fertilizer rates was a part, to assign to fertilizer a relatively low basis of rates in order that it might move freely and thus contribute something to the welfare of the whole public, including the carriers. (R. 810.)

It was this Alabama scale, admitted by an important witness for shippers to be lower than any existing fertilizer rates in Southern Territory that have been prescribed either by the Interstate Commerce Commission or by State Commissions (excepting rates in Mississippi and rates for short distances in Georgia) (R. 55) that shippers and manufacturers advocated for interstate application throughout that territory. (R. 56.)

A. Proceedings before the Commission

In a petition filed July 30, 1924, with the Interstate Commerce Commission on behalf of all the steam railroads operating in Alabama, and referred to as Docket No. 16336, it was alleged that the Alabama Commission by its order of May 26, 1924, required said railroads to establish rates on

fertilizers and fertilizer materials within said state which are less than those permitted or required by the Interstate Commerce Commission to be established for interstate traffic, and that the observance by the railroads of said order of the Alabama Commission will cause and result in undue and unreasonable preference and advantage to intrastate commerce, to the undue and unreasonable prejudice and disadvantage of interstate commerce and will result in unjust and unreasonable discrimination against interstate commerce, in violation of Section 3 and subdivisions 3 and 4 of Section 13 of the Interstate Commerce Act. (R. 189.) Like complaints were filed with the Interstate Commerce Commission on behalf of the steam railroads operating in the states of South Carolina and Georgia, and these complaints were filed as Dockets Nos. 16335 and 16484, respectively. (R. 36, footnote 3.)

Considering these facts and others that had been brought to its attention, the Interstate Commerce Commission upon its own motion, by order dated October 7, 1924 (R. 100), instituted a comprehensive investigation into rates on fertilizers and fertilizer materials between Southern points, which proceeding it designated as Docket No. 16295.

The order recites that interstate rates on fertilizers and fertilizer materials between points in southern classification territory differ materially for substantially similar hauls and, in many instances, are higher for shorter than for longer

hauls; that from numerous complaints filed with the Commission it appeared that those rates were unsatisfactory both to shippers and carriers, and that carriers had filed petitions alleging that intrastate rates on those commodities in South Carolina and Alabama cause undue advantage, preference and prejudice as between persons and localities in intrastate commerce on the one hand and interstate commerce on the other. The order specifies with particularity the rates to be considered and institutes an investigation:

> * * * with a view to determining whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises. (R. 106.)

On October 14, 1924, the Commission issued an order (R. 198) instituting an investigation with respect to the complaint of the steam railroads operating in Alabama, Docket 16336, to determine whether the rates prescribed by the Alabama Com- Commission:

> * * * cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and as to what

> rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice, or discrimination, if any, as may be found to exist; * * *. (R. 199.)

The various State cases heretofore mentioned, Dockets Nos. 16335, 16336, and 16484, involving rates in South Carolina, Alabama, and Georgia, respectively, were consolidated with the Commission's general investigation and heard upon the same record. (R. 36.)

In this view of the facts, it is apparent that the Alabama intrastate rates, separately attacked here, cannot be considered alone, but must be considered in connection with the comprehensive interstate investigation, having for its purpose the fixation of reasonable and properly related rates throughout southern territory for interstate application. In fixing its general rate level the Commission did not confine itself to a mere consideration of the interstate rates; it had before it also the intrastate rates in the several southern states and the tonnage and revenue handled thereunder and derived therefrom; the entire field was investigated. It stated in its report that the state commissions of Alabama, Georgia, Florida, Mississippi, Kentucky, and North Carolina, were represented at the hearings and "took an active and helpful part in developing the record." (R. 37.) It had before it

representative scales for intrastate application in each southern state compared with the carriers' proposed scale. It also had before it the results of a traffic test (R. 65–68) made by the carriers at the request of the Commission. Concerning the traffic test, the Commission said:

> The test showed[1] that 2,154,422 tons, or 67 per cent of the total, moved single line, and 2,189,254 tons, or about 60 per cent, moved intrastate. Of the total revenue of $7,947,908, almost 60 per cent, or $4,753,932, accrued on intrastate traffic. (R. 66.)

Following extensive investigation, the Commission issued its report herein entitled *"Fertilizers and Fertilizer Materials between Southern Points,"* 113 I. C. C. 389, in which it found, at page 424 (R. 79), with respect to the interstate rates involved in its general investigation:

> We therefore find that the rates applicable to the interstate transportation in carloads of mixed fertilizers and of the fertilizer materials listed in Appendix B hereto over standard lines throughout the territory described in Appendix A hereto are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table below,[2] subject to the minimum carload weights found reasonable below; provided,

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[1] These figures should be doubled for the annual basis. (R. 66.)

[2] See R. 79–81 for table.

however, that in applying such rates to the longer hauls the respondent carriers may for purposes of tariff simplification, subject to our approval, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups.

Concerning the intrastate rates in Alabama the Commission found, page 435 (R. 96-97):

> That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce.
>
> * * * * *
>
> No orders will be entered in these State cases, Nos. 16335, 16336, and 16484, at this time. It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment.

Although, as stated by the Commission in its report of July 19, 1926, no orders were entered by it in the State cases at that time, it did, on said July 19, issue an order (R. 112) in connection with the results of its general investigation into rates upon fertilizers and fertilizer materials between

southern points, Docket 16295. By that order the Commission directed the carriers to cease publishing their existing interstate rates, found in its report to be unreasonable, on fertilizers and fertilizer materials between all points located in southern territory as therein described, and to publish within a specified time and thereafter to charge interstate rates based upon a distance scale, not in excess of those therein prescribed.

After the issuance of the Commission's report on July 19, 1926 (R. 32), the Alabama Public Service Commission, by petition filed November 11, 1926, requested a rehearing before the Interstate Commerce Commission. (R. 916.*) In passing, it may be noted that the Alabama Public Service Commission, in its petition for rehearing, stated that the mileage scales of fertilizer rates prescribed by it on May 26, 1924, for general application throughout the State of Alabama on intrastate traffic, if applied generally throughout southern territory, would have reduced the revenues of the carriers, based upon the traffic test made in the proceedings before the Interstate Commerce Commission, approximately $1,250,000 per annum. (R. 245.) This petition for rehearing was denied on February 7, 1927.

* The petition for rehearing mentioned was, by stipulation of the parties, omitted in printing, but it was agreed that, subject to exceptions, a statement contained in paragraph (c) of the petition for rehearing should stand in lieu of the petition itself. (R. 245.)

Thereafter all the railroads doing business in the State of Alabama filed petitions requesting the Alabama Commission to authorize for intrastate application in Alabama the system of rates on fertilizers and fertilizer materials, and articles taking the same rates, prescribed for interstate traffic by the Interstate Commerce Commission in *Fertilizers and Fertilizer Materials between Southern Points, supra.* (R. 10.) On July 18, 1927, that commission entered its report and order denying the relief sought. (R. 10.)

By petition filed with the Interstate Commerce Commission on September 3, 1927, all the railroads doing business in Alabama prayed that the Commission enter an order denying the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates found reasonable for the interstate transportation of said fertilizers and fertilizer materials, and articles taking the same rates, in order to finally complete the investigation and make effective the findings in *Fertilizers and Fertilizer Materials between Southern Points, supra.* (R. 11.)

Acting affirmatively upon this petition of the carriers, and in accordance with its finding of July 19, 1926 (R. 96–97), that the maintenance of intrastate rates in Alabama on a lower basis than the interstate rates prescribed by its order of July 19, 1926, would, in the future, result in unjust discrimination against interstate commerce and in

undue prejudice to persons and localities in interstate commerce, the Commission issued its order dated October 3, 1927 (R. 23). That order recites the Commission's finding of unjust discrimination just mentioned and requires that the carriers therein named:

> * * * be, and they are hereby, notified and required to cease and desist, on or before January 3, 1928, from practicing the undue prejudice, undue preference and advantages, and unjust discrimination found in said report to exist in the relation of interstate and intrastate rates and charges for the transportation of fertilizers and fertilizer materials within the State of Alabama. (R. 24.)

The order further requires the carriers to establish not later than a date named

> * * * and thereafter to maintain rates and charges for the transportation of fertilizers and fertilizer materials in intrastate commerce within the State of Alabama which shall be not less for corresponding distances than the rates contemporaneously applied by said carriers, in accordance with our order of July 19, 1926, and as subsequently amended, to the transportation by said carriers of fertilizers and fertilizer materials between points in the State of Alabama and points in other states of the United States. (R. 24-25.)

By supplemental orders, the effective date was postponed from January 3 to March 1, 1928.

B. Proceedings in the District Court

Suit to enjoin and annul the order was begun by petition filed December 21, 1927 (R. 1-17) and amended January 26, 1928 (R. 211-217), by the State of Alabama and the Alabama Public Service Commission naming as defendants the United States and the several carriers respondents to the order of October 3, 1927. The Commission intervened. After full argument, the District Court* denied the application for an interlocutory injunction (R. 230); on appeal this Court affirmed that action and remanded the case for final disposition on the merits. (279 U. S. 229, 230, 231.) On the final hearing, the District Court again sustained the Commission's order (R. 233) and dismissed the bill of complaint by decree entered June 25, 1930 (R. 232). Direct appeal to this court was allowed August 21, 1930. (R. 237.)

SPECIFICATIONS OF ERROR

The assignment of errors (R. 237-240) and the points on which the appellants rely (R. 1026-1028) as showing that the order of the Commission is invalid, are summarized on page 5 of appellants' brief as follows:

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*On the application for interlocutory injunction the District Court consisted of Circuit Judges Walker and Foster and District Judge Grubb (R. 232); on final hearing, Circuit Judge Bryan and District Judges Sibley and Borah made up the court (R. 232).

(1) There was neither evidence nor definite finding justifying the regulation of all intrastate rates.

(2) There was no evidence or finding showing a competitive relationship of any rates interstate with any rates intrastate.

(3) The issue determined was not the issue pleaded or heard and there was no full hearing.

(4) In so far as rates were prescribed the same for joint and single line hauls there was not only no supporting evidence but the evidence and contentions of all parties were against such a rate method.

(5) The rates prescribed intrastate are not in harmony with interstate rates, the state rates being minimum and the interstate rates being maximum rates, the import rates over which the Commission has jurisdiction being group and the State rates mileage rates, and there being other groupings of interstate rates not applicable to the state rates.

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[1] In the appellants' assignment of errors, filed August 22, 1930, the sufficiency of the findings made by the Interstate Commerce Commission are questioned. (R. 238.) But in their Rule 13 (9) statement indicating "Points on Which Appellants intend to Rely" filed thereafter (on October 15, 1930), appellants have not advanced as a reason for the invalidity of the order, any lack of findings on the part of the Commission. What they say is: "There was no substantial evidence to support a finding that all the rates on transportation wholly within the State of Alabama were in competition with or a burden on interstate transportation." (R. 1027.) See Rule 13 (9) of this Court.

(6) These reasons combined show arbitrary action by the Interstate Commerce Commission.

SUMMARY OF ARGUMENT

I. The Commission's finding of July 19, 1926, prescribing a just and reasonable basis of rates for interstate application on fertilizer and fertilizer materials throughout the South, is supported by substantial evidence.

II. The issues laid by the complaints and the Commission's own order of investigation included (1) the reasonableness of the existing interstate rates and a determination of reasonable rates for the future, (2) whether the Alabama intrastate rates resulted in unjust discrimination against persons and localities in interstate commerce, and (3) in unjust discrimination against interstate commerce. The voluminous record in the consolidated cases contains much evidence specifically directed to each of those issues. Therefore, the findings of the Commission, and its orders issued thereon, are fully supported by the evidence of record, and are not in excess of its authority or otherwise unlawful. These contentions were settled in the *Shreveport Case*, 234 U. S. 342, 358, and *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 588–590.

III. The contention that there was no evidence or finding showing a competitive relationship of any rates interstate with any rates intrastate, is

obviously an afterthought. It was not raised in the Designation of Points on which Appellants intend to rely; (R. 1026) after having been made the subject of an assignment of error (R. 237). Further, this contention is contrary to the record.

IV. The contention that there was no hearing by the Commission concerning the lawfulness of the relation between interstate rates and the intrastate rates, hence, a denial of due process of law, must be rejected; the record demonstrates that complete hearings were had, and fully supports the Commission's condemnation of the intrastate rates in its report of July 19, 1926. It is immaterial that its formal order thereon was not issued until October 3, 1927, after appellants had been afforded ample opportunity to cooperate with the Commission in removing the discrimination. *New England Divisions*, 261 U. S. 184, 200.

V. Whether one rate should apply to both single-line and joint-line hauls is a question for determination by the Commission upon the evidence. *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 550. The Commission prescribed one scale of rates for both hauls, after consideration of evidence amply supporting that finding.

VI. Appellants' contention that the Commission arbitrarily fixed maximum and minimum intrastate rates while prescribing only maximum interstate rates is based upon a misconception of the

orders. Carriers are required to publish interstate rates "not to exceed" those prescribed by the Commission, and intrastate rates "which shall not be less, for corresponding distances, than the (interstate) rates contemporaneously applied by said carriers."

ARGUMENT

I. The Commission's findings of July 19, 1926, fixing a just and reasonable basis of rates for interstate application on fertilizer and fertilizer materials throughout the South, is supported by substantial evidence.

Before the Interstate Commerce Commission may properly interfere with the authority of a State over intrastate rates, it must first determine whether the interstate rates are just and reasonable; that is, before it considers the question of whether rates lower, state than interstate, cause the discrimination and prejudice forbidden by Section 13 of the Act, it is the duty of the Commission to determine whether the interstate rates with which comparison is made, over which it alone has jurisdiction, are just and reasonable.

We believe we can quickly demonstate that the scale of rates prescribed by the Commission in its order of July 19, 1926 (R. 114-115), as just and reasonable for interstate application on fertilizers and fertilizer materials throughout the South, is supported by substantial evidence. The proceedings leading up to the institution by the Commis-

sion of this investigation, designated by it as Docket No. 16295, are stated fully at pages 10 to 18 of this brief, under the headings "Proceedings before the Commission." The purpose of the investigation, the rates to be considered, the consolidation in this investigation of complaints made by carriers under Section 13 (4) of the intrastate rates in South Carolina, Alabama, and Georgia, the active and helpful part taken by the Commissions of these various States in the development of the record, and the extensive character of the hearings conducted therein, are there detailed.

The narrative statement of the testimony introduced at these hearings covers pages 249 to 915 of the transcript.

This evidence covers a variety of subjects bearing upon the reasonableness of the scale the Commission adopted. Among them were the following: A scale of rates the carriers proposed for general application on fertilizers throughout the South (R. 253); the minimum weights thereon (R. 254); the proposal of the carriers to make the less-than-carload rates on fertilizers higher than the carload rates (R. 258); a comparison of the present rates from and to representative points with those proposed by the carriers (R. 261); a discussion of the difference in the rates for single-line and joint-line hauls (R. 262); an exhibit showing rates in effect prior to the revision made by the Commission in the *Blackshear case*, 87 I. C. C. 654, the rates made

applicable under that decision, and the rates that the carriers now propose (R. 264); figures showing the consumption of fertilizer in southern States, 1912 to 1923, inclusive (R. 265); tonnage of fertilizer handled by the southern carriers (R. 267); effect of use of fertilizers in production from crops (R. 269); cost of fertilizers (R. 271); expense of concentrating cars to handle fertilizer movement, which occurs largely in March and April (R. 275–278); local rates on fertilizers authorized by the State Commissions in Virginia, North and South Carolina, Georgia, Florida, and Alabama (R. 278); a statement comparing the existing rates in Eastern Territory with the carriers' proposed rates in this case (R. 278–279); comparisons of rates on fertilizers between stations in Virginia and West Virginia, and between points in C. F. A. Territory as fixed by the Commission, with the carriers' proposed scale (R. 279–280); location of fertilizer factories (R. 280); density of fertilizer traffic (R. 281); comparisons of rates in other territories, including Texas, Arkansas, Oklahoma, Louisiana, Missouri, Tennessee, Kentucky, and Mississippi (R. 282); desirability of uniformity in the rate level throughout the South (R. 284); proportion that the fertilizer revenue bears to the freight revenue on the Atlantic Coast Line (R. 289); extra expense to the carriers in hauling fertilizer (R. 290); tonnage of fertilizers handled by Southern carriers and the average haul thereon (R. 301); a com-

parison of rates which the Commission prescribed on fertilizer from Mount Pleasant, Tenn., to Mississippi points increased under the general increases of 1916 and 1920 reduced under Docket 13293, compared with the Royster scale (R. 311); a statement of the present and proposed rates from Charleston, Savannah, Augusta, Atlanta, Charlotte, and Wilmington to North Carolina points (R. 36); a statement showing the rates from Virginia cities, Norfolk, Richmond, Lynchburg, and Petersburg to North Carolina destinations (R. 318); scales of rates on the Southern Railway (R. 322); a history of the South Carolina rates from 1890 to date (R. 324–329); an exhibit showing the rates from Wadesboro, N. C., to representative points in South Carolina, on fertilizer and fertilizer material, compared with the South Carolina intrastate rates and with the Royster scale (R. 331); a statement showing the interstate rates from Wilmington to South Carolina representative points, compared with the rates intrastate from Charleston and Columbia to the same destinations (R. 331); an exhibit showing the present proposed rates on fertilizer from Ohio and Mississippi River crossings to points in the Carolinas (R. 335); a statement contrasting the rates, the car-mile earnings and the car-car earnings on fertilizer, under the Royster Scale, based on the average loading of 23 tons, which was the average loading of the Southern Railway for the year 1923, with the rates on slag

and stone (R. 355); a statement comparing the rates, revenue per car and revenue per car mile, on petroleum from the Ohio River and South Atlantic Ports to southern points, with the rates, revenue and per car mile earnings on fertilizer for similar distances (R. 357); a statement of the rates on fertilizer, carloads, between points in the State of Mississippi (R. 377); a history of the rates on fertilizer from Ohio and Mississippi River Crossings, Memphis, Nashville, St. Louis and related points, and from Gulf Ports to points in the Mississippi Valley (R. 416); a six page statement showing rates on fertilizer and fertilizer materials, carloads, from Cairo, Evansville and Louisville to the principal points in the Mississippi Valley Territory, prior to the revision under Docket No. 9702 (R. 421); exhibits showing the per car earnings that will accrue to the carriers from the handling of fertilizer and fertilizer materials, in comparison with the per car revenue derived from the handling of other so-called low grade traffic (R. 465); testimony covering the intrastate rates in effect in Alabama, Mississippi, Florida, Georgia and South Carolina on fertilizers and fertilizer materials; testimony that there was agreement that the rates in Florida, on account of the conditions existing in that State, should be a somewhat higher basis than the rates in the States further north (R. 529); an exhibit which compares the rates and car earnings on [illegible] alone with the rates and per car earnings

on the proposed scale on fertilizers (R. 546); a similar exhibit as to cement (R. 546); testimony dealing with the short-line situation in the South (R. 583–599); a statement concerning the movement of fertilizer on the A. T. & N. Railroad during the first four months of 1924 (R. 599); a history of the fertilizer rates between points in North Carolina (R. 602); testimony showing that the Southern States Phosphate & Fertilizer Company shipped from Savannah to various points in South Carolina 12,195 tons in the year 1924–25 (R. 605); testimony showing the average value of fertilizer per ton in 1919, in 1921, and in 1923 (R. 648); a comparison of the mileage scale proposed by the Traffic Committee of the National Fertilizer Association with that proposed by the carriers and those prescribed by the Interstate Commerce Commission in the cases cited (R. 683); scales prescribed by the Commission in the *Memphis-Southwestern Case*, 77 I. C. C. 473, and in the *Blackshear Case*, 87 I. C. C. 654 (R. 636); an exhibit showing a comparison of the mileage scales proposed by the Traffic Committee of the National Fertilizer Association with those proposed by the carriers, and the present intrastate scales prescribed by the Southern States Commission (R. 687); single and joint-line scales prescribed by the North Carolina Corporation Commission (R. 688); the South Carolina single-line scale (R. 689); the Georgia single-line scale (R. 689); the Florida single-line scale (R.

690); the single and joint-line scale prescribed by the Alabama Commission (R. 690); a set of 28 exhibits showing a comparison of the present rates on fertilizers from Charleston, S. C., Atlanta, Ga., Birmingham, Ala., Chattanooga, Tenn., Cordele, Ga., Knoxville, Tenn., McCarty, Tenn., Montgomery, Ala., Nashville, Tenn., New Orleans, La., Pensacola, Fla., upelo, Miss., and Savannah, Ga., to interstate points, and from Chattanooga, Knoxville, and Nashville, Tenn., to Tennessee points, with those based on the scale proposed by the National Fertilizer Association's Traffic Committee and the carriers' proposed scale, (R. 693); a statement showing the average car loadings of fertilizer at representative manufacturing points in the South (R. 729); a statement showing from actual experience the results flowing from an increase in the tariff minimum (R. 732); a comparison of the rates from Meridian, Mississippi, to points in Alabama and Georgia, compared with rates for similar distances from Montgomery and Atlanta to points in Alabama, Georgia and Mississippi (R. 740); and a very full history of the fertilizer rates in Alabama (R. 809–823). There was also introduced an exhibit containing statistical information drawn from official reports to the Interstate Commerce Commission dealing with the revenues of the southern carriers throughout a series of years (R. 913).

We believe we have called attention to sufficient evidence to show that the Commission's finding that

the scale of rates prescribed by it in its order of July 19, 1926, is supported by substantial evidence. In this connection we desire to call attention to the fact that in appellant's designation of the record necessary to be printed (R. 1028) it is stated:

> No issue is made in this case with reference to the validity of the order in so far as it prescribes rates applicable to interstate transportation nor in so far as it prescribes rates intrastate in states other than Alabama, the sole issue relating to the order in so far only as it affects transportation within the State of Alabama.

On page 2 of appellant's brief herein appears the following:

> * * * The issues here relate only to those orders fixing intrastate rates in Alabama. * * *

II. The finding of the Interstate Commerce Commission that the maintenance of lower intrastate rates on fertilizer and fertilizer materials in Alabama than the corresponding interstate rates would be unlawful was justified by the record

The action of the Commission in this case can be sustained as a valid exercise of the authority conferred upon it by Section 13 (4) of the Act to remove (1) any "undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand," and/or under the authority conferred upon it by the

same section to remove (2) "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," caused by lower intrastate rates.

A. Discrimination against persons and localities in interstate commerce.

As we interpret the decision of this Court in the case of *Florida v. United States*, 282 U. S. 194, on which appellants principally rely and which, incidentally, was decided long after the Commission's decision herein, it was not directed against the findings of the Commission relating to undue preference and prejudice as between persons and localities in state and interstate commerce, but, rather, was directed against the finding of the Commission of unjust discrimination against interstate commerce as a whole, namely, the so-called "revenue-burden" finding. In its decision in the *Florida Case* this Court said:

> * * * If the action of the Commission is not simply for the removal of undue prejudice against interstate commerce as between persons or localities, and the Commission undertakes to prescribe a statewide level of intrastate rates in order to avoid an undue burden, from a revenue standpoint, upon the interstate carrier, there should be appropriate findings upon evidence to support an order directed to that end. * * * (Id. 212.)

The practical interpretation given to Section 13 by this Court in the *Wisconsin case*, 257 U. S. 563, has in no way been modified. In that case the Court said (579):

> First. The report and findings of the Commission undoubtedly show that the intrastate fares work as undue discrimination against travelers in interstate commerce and against localities (*Houston East & West Texas Ry. Co. v. United States*, 234 U. S. 342) in typical instances numerous enough to justify a general finding against a large class of fares. * * * Any rule which would require specific proof of discrimination as to each fare or rate and its effect would completely block the remedial purpose of the statute.

See also *New England Divisions case*, 261 U. S. 184.

It must be remembered that the Commission consolidated and heard together on one record the complaints involving the intrastate rates as well as the question of what a reasonable level of interstate rates would be (R. 36); that the situation with respect to the Alabama intrastate rates was but a fractional part of this general investigation, the purpose of which was to first fix interstate rates which would be reasonable and nondiscriminatory rates (R. 36); that the Commission found that the transportation conditions in Alabama are not dis-

similar to those met with on the interstate hauls (R. 90); and that, in view of the nature of the traffic, it was entitled to a relatively low basis of rates, which was to be applied on both interstate and intrastate traffic throughout the South (R. 76).

In the Commission's report (R. 32–99) it found that the fertilizer rates in the South had for some time been the cause of great dissatisfaction (R. 35); the Commission then pointed out that the rates on fertilizer from Norfolk to North Carolina points had been before it on three occasions in what come to be known as the *Royster Cases* (R. 35–36), and then stated the purpose of this proceeding as follows:

> The purpose of this proceeding, therefore, is to determine upon a basis of interstate rates for the movement of fertilizers and fertilizer materials throughout southern territory which will be reasonable and free from undue prejudice and preference, and which will conform, as nearly as may be, to the provisions of the fourth section. With the proceeding have been consolidated for hearing and disposition the three section 13 cases already referred to. While other intrastate rates have not been brought in issue, the desirability of fixing interstate rates which can appropriately and fairly be used as a basis for uniformity in both classes of rates has been recognized from the outset. (R. 36.)

The Commission in its report then discussed the importance of fertilizer to Southern Territory and found that that section "is by far the largest user of fertilizer." (R. 37.) Out of 573 fertilizer plants in the United States, the Commission found, 422 were in Southern Territory. (R. 37.) Next, the Commission found that fertilizer tonnage is also of relatively greater importance to the southern carriers than to the lines in other sections (R. 38) and showed this by figures taken from evidence of record (R. 38). The scale of rates proposed by the carriers for uniform application throughout the South was then discussed by the Commission (R. 39-52), and during this discussion the Commission found as a fact that:

> About 70 per cent of the tonnage of fertilizer and fertilizer materials moving in southern territory is intrastate traffic, * * *. (R. 42.)

The shippers' proposal as to what the rates should be was then fully discussed by the Commission. (R. 52-60.) In the course of this discussion it was found, among other things, that the scale proposed by the shippers was the same as, or based upon, the Alabama scale (R. 54); that the shippers are at one with the carriers in urging uniformity in the rates, the predominant issue being with respect to their level (R. 53), and that the shippers seek to sustain their scale because of "the economic advantages accruing through the use of fertilizer and the

absolute need for its use if southern agriculture is to be at all successful." (R. 57.) Attention was then called by the Commission to the testimony of an employee of the Alabama extension service that "around 4,000,000 tons of fertilizer could be profitably used in Alabama alone, provided it could be bought at a reasonable price, instead of the 580,000 tons used in 1925." (R. 58.) Freight rates were found by the Commission to be a factor in the prices paid by the farmers. (R. 59.) Not being important here, the discussion of the Commission with respect to "Carload Minimum Weight" (R. 60-62) and "Proposal of the Short Lines" (R. 62-65) will simply be referred to.

The Commission's report then reviews the important traffic test made at its request by the carriers to determine the effect upon their revenues, not only of the Royster scale, but of the shippers' scale as well. (R. 65-66.) In this connection it must be remembered that the Commission found that the scale proposed by the shippers was the same as, or based upon, the Alabama scale. (R. 54.) In conducting the traffic test, the months of March and April, 1925, were selected, as it was believed that these months embraced practically 50 per cent of the total movement for the year. (R. 66.) The figures shown in the Commission's discussion of the traffic test should be doubled to arrive at results on an annual basis. (R. 66.) During the traffic test 3,189,819 tons of fertilizer

moved, of which 70 per cent was for distances 150 miles and less. The Commission then found as a fact that:

> The test showed that 2,154,422 tons, or 67 per cent of the total, moved single line, and 2,189,254 tons, or about 69 per cent, moved intrastate. Of the total revenue of $7,947,908, almost 60 per cent, or $4,753,932, accrued on intrastate traffic. (R. 66.)

The Commission found that, based upon the traffic test, the Royster scale of rates would increase the carriers' revenues about $1,668,000 on a yearly basis, of which $420,000 or approximately 25 per cent, would result from interstate traffic. (R. 67.)

It was estimated by the carriers that the shippers' scale, which was the same as, or based upon, the Alabama scale, would reduce their revenues about $1,272,000 per year. That there would be a reduction in fact was not questioned by counsel for the Alabama Commission, although he did contend that the carriers' estimate was too high. (R. 67.)

Under the heading, The Rate Level for the Future, the Commission discussed the important points made by the carriers and shippers in support of their proposed scales. (R. 68–73.) In the course of this discussion the Commission found, that based upon the traffic test, the carriers' revenues would be increased under their proposed scale about 10.5 per cent, and that the increase would be about 6.6 per cent on interstate traffic and about 13

per cent on intrastate. (R. 69.) The Commission found as a fact that a reduction in the freight rates on fertilizer, even if quite substantial, would result in a comparatively small saving per farm, even if all the benefit should accrue to the farmer. (R. 70.) With respect to the shippers' claims that their proposed scale was supported by prior decisions of the Commission, it was found that the record in this proceeding is much more comprehensive than the records in the cases relied upon. (R. 71.)

In its consideration of the question as to what would be a just and reasonable basis of rates for uniform application throughout the South, the Commission found that, upon sound economic grounds, fertilizer is a commodity which should be leniently treated in distributing the burden of freight transportation. (R. 75.) Further, that one of the major obstacles that impede the proper use of fertilizer, is the great excess of the credit price over the cash price. (R. 75.) The Commission also found that the record supports a uniform level of fertilizer rates throughout all the southern territory (R. 76), and pointed out the advantages that would accrue by having one scale of rates, applicable over joint-line and single-line hauls (R. 76–78).

In determining the proper progression of any scale to be prescribed, the Commission found that the drops in progression in the shippers' scale as distance increased, were too abrupt. (R. 78.) It

then prescribed the distance scale of rates to be applied as just and reasonable rates for interstate application throughout the South (R. 79–81), but before making this finding, it gave as the basis for its finding, the following reasons:

> Upon the record before us no other method of determining just and reasonable rates is possible than the exercise of our best judgment in the light of all the evidence submitted. After careful consideration of this evidence, which we have summarized above, and having in mind the principles which we believe should be applied in distributing the burden of rail transportation and which are also set forth above, we have reached the conclusion that a scale somewhat different from that recommended by the examiner, but producing much the same aggregate revenue, should be adopted. (R. 78–79.)

The Commission then made separate findings with respect to what the reasonable carload minimum weights should be as well as just and reasonable less than carload rates on the commodities mentioned. (R. 81–83.) Certain exceptions to the general adjustment were then discussed (R. 83–85), together with the question of port equalization, and the relief asked by carriers from the long-and-short-haul provision of Section 4, neither of which is attacked (R. 85–87). In its report the Commission then discussed the intrastate cases, taking up first the question of discrimination in favor of Alabama

shippers and localities against interstate shippers and localities, and said:

Taking up, first, the Alabama situation, it is shown by numerous exhibits that the rates from points in Mississippi, Tennessee, and Georgia to destinations within Alabama are substantially higher than the Alabama rates for corresponding distances. A few illustrations will suffice to give a general idea of the present adjustment. In conjunction with the present rates are shown also the rates under the single-line Royster scale and under the scale herein found reasonable, for the distances shown:

From—	To—	Distance (miles)	Present rates (cents)	Royster scale (cents)	Scale herein prescribed (cents)
Tupelo, Miss	Glen Allen, Ala	73	230	214	207
Birmingham, Ala	do	73	170	214	170
Chattanooga, Tenn	Leighsville, Ala	62	210	202	185
Decatur, Ala	do	60	185	202	180
Nashville, Tenn	Elmore, Ala	98	200	249	225
Birmingham, Ala	do	107	205	259	225
Cedartown, Ga	Superior, Ala	88	200	196	185
Montgomery, Ala	do	49	145	180	155
Columbus, Ga	Alexander City, Ala	76	227	214	200
Birmingham, Ala	do	83	195	227	210
Rome, Ga	Anniston, Ala	63	215	202	185
Birmingham, Ala	do	63	190	202	185
Atlanta, Ga	Hollis, Ala	83	220	227	210
Birmingham, Ala	do	63	190	227	210

In the foregoing table, destinations have been selected approximately equidistant from the respective origins, but for other distances the intrastate and interstate rates bear a similar relation. Manufacturing plants are located at all the originating points shown, and the evidence indicates that

the transportation conditions in Alabama are not dissimilar to those met with on the interstate hauls.

The Alabama commission contends that the law does not require that intrastate rates shall be maintained on the exact level of interstate rates, citing *Ohio State Rates on Sand, Gravel, Stone, and Paving Blocks*, 85 I. C. C. 66, and that before an intrastate rate may be condemned it must be found to work an undue prejudice against persons or localities in interstate or foreign commerce or unjust discrimination against interstate or foreign commerce as a whole, citing *Wisconsin R. R. Commission*, v. *C. B. & Q. R. R. Co.*, 257 U. S. 563. It urges that the carriers have not proved their case, and points to the fact that the carload minimum in connection with the Alabama rates is 5 tons higher than under the interstate rates, and that its scale averages as high as the so-called normal scales of three of the largest trunk lines operating in that State, namely, the Illinois Central, the Louisville & Nashville, and the Mobile & Ohio. This latter statement is true so far as the average is concerned, but specific consideration of the present interstate rates is unnecessary, for they will be changed under our findings herein. As shown by the above table, the new rates will be substantially higher for equal distances than the Alabama intrastate rates, and they will be subject to the same carload minimum.

> While exact harmony between intrastate and interstate rates may not in all cases be required by the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon substantially lower than the interstate rates contemporaneously applied under similar conditions must bring about, in some degree at least, the unjust discrimination against interstate commerce, as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful. (R. 88-90.)

Concerning these Alabama intrastate rates, the Commission's ultimate finding was:

> That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce.
>
> * * * * *
>
> No orders will be entered in these State cases, Nos. 16335, 16336, and 16484, at this time. It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment. (R. 96-97.)

The basic and ultimate findings thus made by the Commission would seem to be definite enough and to meet statutory (Sec. 14 of the Interstate Commerce Act) and judicial requirements. *Colorado v. United States*, 271 U. S. 153, 167; *Chesapeake & Ohio Ry. Co. v. United States*, No. 73, October Term, 1930, decided March 9, 1931.

The findings upon which the order is based would seem to be adequate enough to justify the order; the question next is, whether the findings on which the order is based are in turn supported by evidence.

The testimony of Mr. Drescher, assistant to the vice president of the Louisville & Nashville Railroad Company, covers pages 441 to 484 of the printed record and the exhibits introduced by him in support of his testimony, Numbers 157 to 195, inclusive, are there explained. By this testimony Mr. Drescher traced the history of the freight charges assessed on fertilizers and fertilizer materials moving between points in Alabama from 1907 down to the time of the hearing, April, 1925 (R. 445–450); showed that the scale of rates on these commodities prescribed by the Alabama Commission in 1924 had taken away from the carriers most of the increase which they were granted in 1920 under *Ex Parte* 74, 58 I. C. C. 220 (R. 449); compared the rates on fertilizer which the Alabama Commission prescribed with the normal interstate rates maintained by the various Southern lines between Southern points (R. 451–452); showed that

out of a total of 2,355 rates the Alabama scale is less than the interstate rates shown on the exhibit in 2,145 instances, higher in 182 instances, and the same in 28 instances (R. 453); showed that the substitution of the Royster scale, which is the scale that carriers propose, for the present interstate rates from these manufacturing points to destinations named will produce 1,114 reductions, 963 advances, and 278 instances in which there will be no change in the present rate (R. 453); called attention to the fact that the rates from Birmingham to stations on the Louisville & Nashville are very much less than the rates for corresponding distances from Nashville, Tenn., as illustrated by rates from Birmingham to Athens, Ala., for 98 miles of $1.95 and from Nashville to an equidistant station in Alabama, Elkmont, $2.59; showed that the rate from Birmingham to Elkmont, 107 miles, was $2.05, and from Nashville to Athens, the same distance, $2.59, and testified that there had been carload shipments in 1925 from Birmingham to stations in Alabama shown on the exhibit as follows: Trafford, Hayden, Blount Springs, Garden City, Hanceville, Cullman, Falkville, Hartselle, Decatur, Athens, and Elkmont (R. 455-456). The witness further stated:

> These points outside the State of Alabama were chosen because of my understanding that there is a fertilizer movement to points at each one of them, and the territory between these points and the Ala-

bama cities may, I think, be considered as a natural and logical marketing territory for those factories. (R. 455.)

Mr. Drescher further testified that the rates from Nashville are higher for corresponding hauls than the rates from Birmingham; that the dip in the rates to the station that is as far from Nashville as Aspen Hill, Tenn., is from Birmingham is due to the low measure of the rate from Nashville to Decatur, which is the equidistant point from Nashville, and that this rate is now $2.25 per ton and is less than the rate to points on either side of Decatur. (R. 456.) The witness also showed that the rate from Decatur, Ala., to Cullman, Ala., 32 miles south of Decatur, was $1.30, while to Prospect, Tenn., 30 miles north of Decatur, the rate is $1.69. (R. 462.) The witness' exhibit No. 170 showed the present rates from Decatur, Ala., versus Chattanooga, Tenn., to agency stations on the Southern Railway in Alabama between those two points, and further showed that Decatur is now able to ship into these Alabama points at rates very much less than Chattanooga to equidistant points on the same line of railroad. To illustrate, Mr. Drescher called attention to the $1.65 rate from Decatur to Scottsboro, Ala., for 66 miles, as against a rate of $2.10 for the same distance from Chattanooga, Tenn., to Lim Rock, Ala.; that the midway points would be Gurley, Ala., from Decatur, and Cedar Grove, from Chattanooga, and that the rate from Decatur to Gurley, Ala., is $1.40, and from

Chattanooga to Cedar Grove is $1.80, a difference of 40 cents a ton in favor of the intrastate shipper. (R. 457–8.) Mr. Drescher further called attention to the adjustment from Decatur, Ala., versus Corinth, Miss., to intermediate agency stations on the Southern Railway, as shown by exhibit 176. This exhibit illustrates the advantage in rates to Alabama points possessed by Decatur over Corinth, Miss., for like hauls. (R. 461.) Exhibit No. 178, dealing with the adjustment prevailing from Mobile, Ala., and Pensacola, Fla., to stations on the Louisville & Nashville as far north as Montgomery, shows the decided advantage that Mobile has to the greater portion of this territory. (R. 462.) Comparisons also were submitted showing the rate relation between the following points on the lines mentioned:

Birmingham, Ala., as compared with Atlanta, Ga., at intermediate points on the Southern Railway (exhibit 173) (R. 460); Montgomery, Ala., as compared with Richland, Ga., at intermediate points on the Seaboard Air Line (exhibit 174) (R. 460); Montgomery, Ala., as compared with Columbus, Ga., at intermediate points on the Central of Georgia Railway (exhibits 175 and 180) (R. 460, 463); Birmingham, Ala., as compared with Tupelo, Miss., at intermediate points on the St. Louis-San Francisco Railway (exhibit 177) (R. 461–462). At a later hearing Mr. Drescher further testified concerning the movement of fertilizer in cars and in tons from the Alabama ship-

ping points and inter-
by his earlier testimo

These are typical
tion against intersta
traffic which the Co
Such discrimination e
ville and manufactu
favor of Birmingham
at the latter point, b
state points includin
and Richland, Ge
Corinth and Meridia
located at such points

The movement fro
bama destinations is
hauls from points i
Alabama State line.
submitted before the
movement and the po
of fertilizer to destina
located on the Alab
Railroad for the firs
exhibit is, in part, a

Point of origin
Mobile, Ala.
Montgomery, Ala.
East Point, Ga.
Meridian, Miss.
East Birmingham,
Bessemer, Ala.
Grasselli, Ala.
Northport, Ala.
Atlanta, Ga.
Macon, Ga.
New Orleans, La.
Total

ate shipping points covered
y. (R. 602.)
xamples of the discrimina-
e commerce and interstate
mmission ordered removed.
isted not only against Nash-
ers located at Nashville in
and manufacturers located
also against various inter-
Atlanta, Rome, Columbus
rgia, Pensacola, Florida,
, Miss., and manufacturers

n interstate origins to Ala-
y no means limited to short
adjacent States near the
For example, Exhibit No. 288,
Commission, shows the total
nts of origin of all shipments
ions in the State of Alabama
ma, Tennessee & Northern
four months of 1925. This
follows:

	Number of carloads
	42
	36
	23
	16
a	7
	9
	5
	1
	1
	1
	1
	139

It will be observed that out of the total of 139 carloads of fertilizer moving to destinations on the Alabama, Tennessee & Northern in Alabama during the period stated, 41 carloads originated at points in other states, such as East Point, Atlanta, and Macon, Georgia, and New Orleans, Louisiana. Atlanta, Macon, and East Point are in the central portion of the State of Georgia, while the points on the Alabama, Tennessee & Northern are in the western portion of the State of Alabama.

Exhibit No. 46, introduced before the Commission, shows the location of fertilizer plants in Southern territory. It will be observed, upon reference to this exhibit, that there are numerous plants located in Georgia, Tennessee, Mississippi, and Florida contiguous to the State of Alabama.

There is a heavy movement of fertilizers and fertilizer materials from interstate points of origin to destinations in the State of Alabama. The following statement, reproduced from Statement D of Exhibit No. 492, filed before the Commission, shows the state and interstate movements to Alabama destinations during March and April, 1925, the period covered by the revenue test, which the carriers made at the direction of the Commission:

Destined to—	Number of cars	Weight (tons)
Alabama:		
Intrastate	8,021	242,465.44
Interstate	4,979	168,441.13

It will be observed that during this two months' period 12,597 carloads of fertilizers and fertilizer materials moved to destinations in Alabama. Of this number, 3,976 carloads moved from *interstate* points of origin. The movement from interstate origins to Alabama during this two months' period aggregated 103,500 tons. Inasmuch as the movement for this two months' period represents approximately one-half of the annual movement (R. 66) it is obvious that the annual movement of fertilizer from *interstate* points to Alabama destinations aggregates approximately 7,952 carloads.

Mr. C. W. Hayward, appearing on behalf of the Meridian, Miss., Traffic Bureau, testified in part as follows:

> We are in accordance with the principle of equalization, which we understand it is the purpose of the Commission to effect by this investigation. We have discriminations against Meridian not only in the intrastate rates in Alabama but also in the interstate rates from manufacturing points in Mississippi and from points in Georgia.
>
> * * * We have a large fertilizer factory in Meridian. They operate three factories, one in Meridian, one at Hattiesburg, and one at Shelbyville. And fertilizer is a commodity that is not necessarily limited to a restricted zone of distribution. The Meridian Fertilizer Factory can and does ship into Alabama, Georgia, Florida, and all over the Southeast, wherever they may place

their product, and I do not know to what extent, whether they do to a very large extent, but it is not a commodity that is limited in its distribution.

As to the movement into Mississippi, I know that there has been a movement from Alabama—possibly Montgomery, Alabama, into plants surrounding Meridian, into our trade territory, and that has been possible largely because of these discriminations in favor of the Montgomery shipper, the Alabama shipper. I don't know that our factory ships into Georgia, now. I would not be in position to state definitely that they are covering those States to any extent, but I say it is possible to do it, just as it is possible for Atlanta or Montgomery or Birmingham or any fertilizer manufacturing point to ship into Mississippi, but we think that rates from Meridian into Alabama and Georgia should be on the same plane, same relative plane, as rates from fertilizer plants in Alabama and Georgia to Mississippi. (R. 740–742.)

Witness T. A. Bosley, testifying on behalf of the National Fertilizer Association said:

* * * The movement of fertilizer varies so—that is, I mean, it varies from different factories. One year, a good big tonnage may move from a certain point and the next year that tonnage may be decreased very much, and move from another point, and of course that would affect the revenue to a great extent. (R. 700.)

Witness J. H. Aldridge, who appeared in the hearings before the Commission as a witness for the Alabama Commission, testified:

> Now, as to grading the scale. *Fertilizer factories are scattered all over the Southeastern Territory, and are actively competing in common territory in the sale of fertilizer, and if a scale breaks too abruptly, the chances are that one or more of the several factories competing in the same territory will obtain the advantage of the breaking scale, and use it against its competitors.* The sale of fertilizer seems to have pretty keen competition, and the fertilizer factories are scattered around, so that in almost every spot in the Southeast there is competition between two or more factories. (*Underscoring* supplied.)

Much more testimony of similar import is in the record, but we believe we have summarized enough of it to show that the action of the Commission was warranted. This testimony showed the situation not only with reference to "certain rates along the border lines of Alabama and Georgia and of Alabama and Tennessee," concerning which appellant says there is a "possibility" of some discrimination (R. 13-14), but also from interstate fertilizer plants in Mississippi on the west and Florida on the south to destinations in Alabama intermediate to the principal producing points in that state, thus covering the entire state. Mr. Dresscher was testifying not

only for the Louisville & Nashville, but for other carriers, various portions of the cases having been assigned to the several lines. (R. 445.) This witness said his testimony

> will have to do with the rates on fertilizer and fertilizer materials applicable to points in Alabama and to the rates between points within that State, and to the 13th Section application filed by the carriers, and which is assigned for hearing at this time. I will also deal with the rates to points in Kentucky and from Ohio River Crossings to destinations in Montgomery and Atlanta sub-divisions of Southeastern Territory. (R. 445.)

Mr. Drescher stated he knew of no transportation conditions existing that would warrant these abrupt breaks in the rates at the State lines, and that the only explanation he had for it was the action of the Alabama and Georgia state commissions in making lower rates between points within those states than applied interstate. (R. 459.) Witness McConnell, for the Central of Georgia Railway, on this point said (R. 496):

> There is no such dissimilarity in the transportation of circumstances and conditions surrounding the handling of intrastate traffic on the one hand as compared with interstate traffic on the other than (that) in my opinion would justify a difference in rates; I know of no transportation condition that warrants a different rate when a state line is crossed.

On this point the Commission, in its report of July 19, 1926, found:

> * * * the evidence indicates that the transportation conditions in Alabama are not dissimilar to those met with on the interstate hauls. (R. 90.)

The testimony for the Alabama Public Service Commission was presented by Mr. Alldredge, the head of its transportation department. In his testimony he stated that he appeared for the dual purpose of sustaining the Alabama rates in the 13th section case and to establish their reasonableness for general application on interstate traffic throughout the southeastern territory. (R. 809.) Mr. Alldredge's testimony covered the main considerations prompting the Alabama Commission in prescribing the scale of rates it did. (R. 809–816.) He also testified as to the elements to be considered in grading a fertilizer scale (R. 816–818); and that the Alabama Commission was influenced by the fact that average loadings of fertilizer had risen from 17 tons to 23 tons per car (R. 814).

Mr. Cooper, an accountant of the Alabama Public Service Commission, compiled and introduced certain exhibits, and testified concerning them, showing statistics in regard to the fertilizer movement in Alabama (R. 829); including percentage of fertilizer revenue of the total revenue (R. 830); the fertilizer traffic originated by Class I roads (R.

830); the average weights per car of fertilizer originated and carried by Class I roads (R. 831); average hauls (R. 831); average receipts per ton-mile (R. 831); etc. Mr. Cooper also said:

> This statement shows that the railroad movement intrastate is 91.37 per cent of the entire railroad movement intra and interstate. This table further shows that the combined wagon and boat movement of such fertilizer is slightly in excess of 25 per cent of the total distribution. (R. 834.)

The testimony of these witnesses, and other comparisons contained in the more than 500 exhibits introduced in the proceedings before the Interstate Commerce Commission, constitute evidence upon which the Commission could base its finding (*Western Chem. Co.* v. *United States*, 271 U. S. 268, 271) that the lower intrastate rates in Alabama constituted the undue prejudice against persons and localities in interstate commerce condemned by the Act and which it was the Commission's duty, after hearing, to remove. The *Western Chemical Case, supra*, is also authority for the holding of the Supreme Court that it is beyond the court's province to consider the weight of the evidence. (P. 271.)

To our minds this brings the action taken by the Interstate Commerce Commission clearly within the rule approved by this court in the *Wisconsin case, supra*, at page 579, quoted at page 32 of this brief.

In the *Wisconsin case, supra,* this court said:

> Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. Twenty per cent of the gross freight receipts of the railroads of the country are from intrastate traffic, and fifty per cent of the passenger receipts. The ratio of the gross intrastate revenue to the interstate revenue is a little less than one to three. If the rates, on which such receipts are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. Section 15a confers no power on the Commission to deal with intrastate rates. What is done under that section is to be done by the Commission "in the exercise of its power to prescribe just and reasonable rates," i. e., powers derived from previous amendments to the Interstate Commerce Act, which have never been construed or used to embrace the prescribing of intrastate rates. When we turn to paragraph 4, section 13, however, and find the Commission for the first time

vested with a direct power to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," it is impossible to escape the dovetail relation between that provision and the purpose of section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable, or unjust discrimination against interstate or foreign commerce," within the ordinary meaning of those words.

In the *Florida Log Case, supra,* after calling attention to the fact that the interstate rates involved were those applying on logs from points in north Florida to destinations in Georgia for distances not exceeding 170 miles (p. 206) this court said (p. 208):

> * * * The limitation of the Commission's finding as to interstate rates, and of the order prescribing them, to transportation from points in the northern part of Florida to points in Georgia, defined the interstate commerce which was deemed to be concerned. All of this commerce was potential, no actual movement from Florida to Georgia having been shown. It would be an extreme and unwarranted assumption that to protect this interstate commerce from unjust discrimination as between persons or localities, it was necessary to alter the existing rates for the transportation of logs be-

tween all points whatever within Florida. Such a conclusion would not only require evidence to support it but findings of appropriate definiteness to express it.

Again, in the same decision, the court said:

> * * * If the action of the Commission is not simply for the removal of undue prejudice against interstate commerce as between persons or localities, and the Commission undertakes to prescribe a statewide level of intrastate rates in order to avoid an undue burden, from a revenue standpoint, upon the interstate carrier, there should be appropriate findings upon evidence to support an order directed to that end. (Id. 212.)
>
> * * * In considering the authority of the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of rates to income. The raising of rates does not necessarily increase revenue. (Id. 214.)

In the instant proceeding the "interstate commerce * * * deemed to be concerned" covers the entire Southern Territory south of the Potomac and Ohio Rivers and east of the Mississippi, whereas in the *Florida Log Case* the interstate commerce affected was very limited in extent. Further in this case the movements are not merely potential, but as shown by the traffic test (R. 65-66) are heavy actual shipments. As a fact the Commission, as shown above, found:

> The test showed that 2,154,422 tons, or 67 per cent of the total, moved single line, and 2,189,254 tons, or about 69 per cent, moved intrastate. Of the total revenue of $7,947,908, almost 60 per cent, or $4,753,932, accrued on intrastate traffic. (R. 66.)

During this two months' period 12,597 carloads of fertilizers and fertilizer materials moved to destinations in Alabama. Of this number 3,967 carloads moved from *interstate* points of origin. The movement from interstate origins to Alabama during this two months' period aggregated 103,500 tons. Inasmuch as the movement for this two months' period represents approximately one-half of the annual movement (R. 66) it is obvious that the annual movement of fertilizer from *interstate* points to Alabama destinations aggregates approximately 7,952 carloads.

The importance of the fertilizer tonnage to the carriers was found by the Commission as follows:

> Fertilizer tonnage is also of relatively greater importance to the southern carriers than to the line in other sections. In 1929 such tonnage of the southern roads represented 1.46 per cent of their total freight tonnage, as compared with 0.35 per cent in the eastern district and 0.18 per cent in the western district. The Atlantic Coast Line leads the southern carriers in the total of fertilizer handled, with the Southern second and the Seaboard Air Line third. In the ratio of fertilizer to total freight, the Cen-

tral of Georgia ranks first, its fertilizer tonnage being 6.61 per cent of the total, with the Atlantic Coast Line second and the Norfolk Southern third. These tonnage figures do not include such materials as potash, acid phosphate, and nitrate of soda, which, for purposes of our statistical returns, are included in commodity Group 66 chemicals and explosives. If these were included, the fertilizer tonnage figures would be appreciably increased. The total revenue of Class I roads in the southern district for 1923 from such tonnage was $10,307,000, or 1.3 per cent of the total revenue from all freight handled. In the eastern district the revenue from fertilizer tonnage was but 0.3 per cent of the total. The revenue of the Atlantic Coast Line from this source was 4.7 per cent of its total freight revenue in 1924, and that of the Southern for the first seven months of 1924 was 3.63 per cent of its total for the same period. (R. 38.)

It further found hat about 70 per cent of the tonnage and fertilizer materials moving in Southern Territory is intrastate traffic (R. 42); and that "the shippers are at one with the carriers in urging uniformity in the rates; the predominant issue is with respect to their level." (R. 53.) Also:

As the position of the shippers is understood, not so much stress is laid on rate comparisons to sustain their scale as on the economic advantages accruing through the use of fertilizer, and the absolute need for

its use if southern agriculture is to be at all successful. (R. 57.)

With respect to the traffic test (R. 65–68) conducted by the carriers to determine the effect on their revenues of the scale they proposed, as well as the Alabama, or shippers', scale:

The Commission found that the Royster scale of rates would increase the carriers' revenues about $1,668,000 on a yearly basis, of which $420,000 or approximately 25 per cent, would result from interstate traffic. (R. 67.)

It was estimated by the carriers that the shippers' scale, which was the same as, or based upon, the Alabama scale, would reduce their revenues about $1,272,000 per year. In its petition for rehearing, the Alabama Commission admitted that if its scale applied generally throughout the South, it would mean a revenue loss to the carriers of $1,250,000 per annum. (R. 245.)

Discussing the traffic test, the Commission also found:

> * * * That test showed that, exclusive of Florida traffic, aggregate revenues would be increased by the Royster scale about 10.5 per cent. The increase would be about 6.6 per cent on interstate traffic and about 13 per cent on intrastate. It appears, however, that increases in the case of interstate traffic would be chiefly in the territory west of the Appalachian Range and south of Kentucky. (R. 69.)

After making these basic findings, the Commission then made its ultimate finding:

> 1. That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce. (R. 96.)

The purpose of this proceeding is best stated by the Commission itself:

> Dissatisfaction on the part of shippers and users as well as of carriers with the rates on commercial fertilizer and fertilizer materials in southern territory has for some time been increasingly evident.
>
> Our decisions upon such formal complaints as have been brought have served only to mitigate the discontent in the particular sections affected.
>
> Interstate rates vary greatly for substantially similar hauls; many indefensible fourth-section departures exist; and the intrastate rates which have been enforced by some of the States are attacked by the carriers as unreasonably low, and it is alleged that they adversely affect manufacturers and dealers shipping into those States over interstate routes. During 1924 three petitions were filed with us by carriers seeking

relief under section 13 of the interstate commerce act from the intrastate rates, respectively, in South Carolina, Alabama, and Georgia. (R. 36.)

That the Commission's investigation was for the purpose of removing discriminations is apparent from the following language contained in the report of the Commission:

> In his proposed report the examiner recommended a scale somewhat higher than the shippers' scale and somewhat lower than the carriers'. Upon argument the carriers conceded that the scale so recommended would about maintain their aggregate revenues. But our decision can not properly be predicated solely upon an attempt to average existing rates and maintain revenues. (R. 73.)
>
> Upon the record before us no other method of determining just and reasonable rates is possible than the exercise of our best judgment in the light of all the evidence submitted. After careful consideration of this evidence, which we have summarized above, *and having in mind the principles which we believe should be applied in distributing the burden of rail transportation* and which are also set forth above, *we have reached the conclusion that a scale somewhat different from that recommended by the examiner, but producing much the same aggre-*

gate revenue, should be adopted. (R. 78–79.) (Italics supplied.)

This scale was to furnish the basis for just and reasonable interstate rates. That, as heretofore said, is naturally necessary in determining whether or not state rates unjustly discriminate against interstate commerce or shippers. Uniformity in rates was either advocated or conceded to be warranted by all parties. And that meant not only that transportation conditions throughout the territory were substantially the same, but also that it was considered that abrupt rate breaks at state lines must result in unjust discrimination.

Where so large a preponderance of the total tonnage handled within southern territory is intrastate, it is apparent how necessary it is for the intrastate traffic to bear its fair share of the transportation burden and to contribute ratably and equally to the carriers' revenue, if an unjust discrimination against and undue burden upon interstate traffic is to be avoided. Obviously, if the states are to be free to determine the respective levels of intrastate rates in the several states and to do as the State of Alabama has sought to do to maintain intrastate rates materially lower than the interstate rates prescribed and fixed by the Commission, where such a large percentage of the traffic is intrastate in southern territory, it will follow that the loss resulting from the lower rates on intrastate

traffic must be made up by increasing the interstate rates on fertilizers and fertilizer materials, or by placing the additional burden upon other interstate traffic.

A doctrine which would permit the states to depart freely from the standard and the level of rates prescribed by the Commission for interstate traffic and to maintain substantially lower rates than those promulgated by the Commission for interstate application would destroy the fundamental purposes of the Interstate Commerce Act, as amended by the Transportation Act, and would render nugatory the efforts of the Commission to adjust rates and establish rate levels which would permit it to discharge its duties under the Interstate Commerce Act, as amended. That such a doctrine, if recognized, would burden interstate commerce is clearly demonstrated and requires no argument to support it. The Commission has pointed out these consequences time and again, and clearly the question of unjust discrimination against interstate commerce flowing from the lower level of intrastate rates was likewise recognized and condemned by this Court in the *Wisconsin case*, 257 U. S. 563, 66 L. Ed. 371.

Bearing in mind always that the Commission has found as a fact, after analysis of the movement, that seventy per cent of the tonnage of fertilizer and fertilizer materials moving between points in

southern territory is intrastate traffic (R. 66), and that the intrastate traffic must contribute its fair share of transportation revenues, it is apparent that a substantially lower level can not be permitted in favor of intrastate traffic than that which has been prescribed and which governs the traffic moving interstate.

It was contended by the Alabama Commission in the proceedings before the Commission that the scale which it promulgated for application in Alabama should be used as the standard not only for Alabama intrastate rates, but also to fix the measure of rates throughout southern territory. The Alabama intrastate scale was the lowest scale on fertilizer ever prescribed either by the Interstate Commission or any State Commission and made effective in Southern territory, with the sole exception, perhaps, of certain intrastate rates in Georgia and in Mississippi. (R. 55.)

After reviewing the economic considerations stressed by shippers, the amount of fertilizer used throughout southern territory, as contrasted with the tonnage used in the southwestern states, and after having given consideration to and having analyzed the voluminous evidence submitted by the interested parties, including the results of the traffic test made, the Commission then proceeded at pages 416–427 of its report (113 I. C. C. 389) (R. 68–73) to discuss the rate level for the future, and

in so doing it made a comprehensive statement of the salient points made by the carriers and shippers in regard to the scales proposed by them, respectively, and made brief comments thereon in regard to these contentions; and it found that the record supported one uniform level of rates throughout southern territory on this traffic.

It then proceeded to promulgate and fix what is considered to be, using its informed judgment and the facts developed by the record, the reasonable level of fertilizer rates to be thereafter observed for both interstate and intrastate application.

The Commission's report shows that the carriers' estimate that, if the Alabama intrastate scale were adopted as the measure to fix the level of rates throughout the territory, the *revenue* of the carriers would be reduced approximately $1,272,000 on an annual basis (113 I. C. C. 415.) (R. 67.) This was in effect admitted by the Alabama Public Service Commission in its petition for rehearing. (R. 245.)

If Alabama is to be permitted to maintain rates upon a lower level than the prescribed interstate adjustment, the same privilege would have to be accorded other states, and the record clearly indicates that uniformity of rate levels is the only solution for these difficulties which would arise if the states, by successful independent actions, were left free to do what the Alabama Commission here con-

tends it should be permitted to do, namely, to ignore the scale of rates promulgated by the Interstate Commission under the circumstances aforesaid and substitute its own independent judgment and the lower level of rates for the judgment of the Interstate Commission and the level of rates which it has prescribed with all the light before it thrown upon the problem by this comprehensive proceeding, embracing as it does the whole of southern territory, and presenting the views of all interested parties, including the Alabama Public Service Commission, which was heard at length upon and concerning the scale it advocated and its reasons for promulgating and advocating the same.

The Commission found and held that the scale which it prescribed, if applied to both intrastate and interstate shipments of fertilizer and fertilizer materials, would about balance the existing revenues of the carriers, thereby lowering very generally the interstate level and increasing in some States the intrastate rates so as to bring the rates into harmony, using the level and yardstick prescribed by the Commission. If one State could depart from that level and make lower intrastate rates, other States may make even more serious departures, thereby further depleting the carriers' revenues; but we have it established of record that the extent to which the Alabama Commission has gone, and the rates which it advocates, if applied throughout the territory to both interstate and

intrastate traffic, would result in a loss of at least $1,250,000 annually. (R. 245.)

Fertilizer tonnage, and materials used in the manufacture of fertilizer, constitute a considerable portion of the tonnage of the carriers. (113 I. C. C. at p. 393) (R. 38). That branch of traffic must contribute its fair share of transportation revenues. What that contribution shall be in the distribution of the so-called transportation burden is confided to the Commission in that, under Section 15a, it must initiate and permit the establishment of rates upon all traffic which will yield, in the aggregate, as nearly as may be, the prescribed return.

The Commission has found that the maintenance of the lower Alabama intrastate rates will constitute not only an unjust discrimination and undue prejudice against localities served in interstate commerce, but that it will constitute, and does constitute, an undue, unreasonable, and unjust discrimination against interstate commerce itself. (R. 96.) It has ordered the discrimination removed and, as required by paragraph 4 of Section 13, it has prescribed the method to be used in removing the discrimination and the rates thereafter to be observed. Those rates have been ordered by it to be placed on the level prescribed by it for application throughout southern territory, having regard to both interstate and intrastate tonnage of fertilizer and fertilizer materials moving within that territory. (R. 78–79.)

The existence of unjust discrimination against interstate commerce caused by the maintenance of the lower Alabama intrastate rates is to be determined solely by the Interstate Commerce Commission, which has exclusive jurisdiction to pass upon such questions of fact, and this finding, it is submitted, is based on substantial evidence. *Board of Railroad Commissioners of North Dakota* v. *Great Northern Ry. Co.*, 281 U. S. 412, 430; *Western Paper Makers' Chemical Co.* v. *United States*, 271 U. S. 268; *United States* v. *Pennsylvania R. R. Co.*, 266 U. S. 191, 199; *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 663.

III. There was evidence showing a competitive relationship between interstate and intrastate rates

It is urged by appellants that there was no evidence or finding showing a competitive relationship of any rates interstate with any rates intrastate. It is significant that this point, after being made the subject of an Assignment of Error (R. 237), was not referred to in the Designation of Points on which Appellants intend to Rely (R. 1026).

We have reviewed the findings and testimony before the Commission at considerable length under prior headings, and such discussion will not be repeated here. Suffice it to say that we have shown the location of fertilizer plants in southern territory and the fact that there is a heavy movement of fertilizers and fertilizer materials from inter-

state points of origin to destinations in Alabama. Mr. Drescher, for the carriers, introduced numerous exhibits showing the rate relationship, and testified that in selecting points in other states from which he compared the rates with the Alabama intrastate rates, he undertook to use fertilizer manufacturing points which sold their products in Alabama in competition with Alabama fertilizer manufacturers. (R. 455.)

Exhibit No. 288 shows that out of the total of 139 carloads of fertilizer moving to destinations on the Alabama, Tennessee & Northern in Alabama during the period stated, 41 carloads originated at points in other States, such as East Point, Atlanta, and Macon, Georgia, and New Orleans, Louisiana. Atlanta, Macon and East Point are in the central portion of the State of Georgia, while the points on the Alabama, Tennessee & Northern are in the western portion of the State of Alabama. As hereinbefore shown, pertinent language used by witnesses was as follows:

Witness Hayward, testifying on behalf of the Meridian Traffic Bureau, said:

> We are in accordance with the principle of equalization, which we understand it is the purpose of the Commission to effect by this investigation. We have discriminations against Meridian not only in the intrastate rates in Alabama, but also in the interstate rates from manufacturing points in Mississippi and from points in Georgia.

> * * * We have a large fertilizer factory in Meridian. They operate three factories, one in Meridian, one at Hattiesburg, and one at Shelbyville. And fertilizer is a commodity that is not necessarily limited to a restricted zone of distribution. (R. 740–2.)

Witness Bosley, appearing on behalf of the National Fertilizer Association, said:

> The movement of fertilizer varies so—that is, I mean, it varies from different factories. One year, a good big tonnage may move from a certain point and the next year that tonnage may be decreased very much, and move from another point, and of course that would affect the revenue to a great extent. (R. 700.)

The undisputed testimony of witness after witness in the case is to the effect that fertilizers and fertilizer materials move throughout the State of Alabama in both intrastate and interstate commerce; that the interstate movement into that state is not confined to border points, but, on the contrary, there is a large movement from points outside of Alabama, both into and through that State, and for relatively long hauls; and further, that in Alabama, as in other portions of Southern territory generally, fertilizer factories are located at numerous points, and the various manufacturers are active competitors among themselves for the sale and distribution of their products throughout the sur-

rounding territory. These facts, moreover, appear not only from the testimony of both railroad and shipper witnesses, but also from the testimony of the rate witness for the Alabama Public Service Commission. (R. 815.) This witness said:

> * * * *Fertilizer factories are scattered all over the Southeastern Territory, and are actively competing in common territory in the sale of fertilizer, and if a scale breaks too abruptly, the chances are that one or more of the several factories competing in the same territory will obtain the advantage of the breaking scale, and use it against its competitors.* The sale of fertilizer seems to have pretty keen competition, and the fertilizer factories are scattered around, so that in almost every spot in the Southeast there is competition between two or more factories. (R. 815–16.) (Italics supplied.)

IV. Full hearings were accorded by the Commission and there was no denial of due process of law

Appellants urge that the issue determined was not the issue pleaded or heard and that there was no full hearing.

In its report of July 19, 1926, the Commission stated that dissatisfaction on the part of shippers and users as well as of carriers with the rates on commercial fertilizer and fertilizer materials in southern territory had for some time been increasingly evident (R. 35) and as a result it instituted a general investigation into the matter (R. 36).

Following this investigation the Commission made the order heretofore reviewed. We think the course it pursued was proper.

As we understand the contention of appellants now being discussed, it is that as the interstate scale prescribed by the Commission in its report and order of July 19, 1926, differs from the interstate rates charged on fertilizer and fertilizer materials before that date, the Commission acted arbitrarily and beyond its authority in finding that the intrastate rates in Alabama, as compared with the interstate scale the Commission prescribed in its order of July 19, would cause undue prejudice and unjust discrimination against interstate commerce; in other words that the condemnation of the Alabama rates by comparing them with the new scale of interstate rates prescribed by the Commission in Docket 16295 was beyond the issues and deprived

appellants of due process of law in that they were not accorded a full hearing on that matter.

The order of the Commission of October 14, 1924 (R. 198), instituting this general investigation covered, among other things,

> what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners (carriers), in order to remove such advantage, preference, prejudice, or discrimination, if any, as may be found to exist;

The findings and conclusions upon which the Commission's order of July 19, 1926, are based are matters concerning which the court will not substitute its judgment for the judgment of the Commission. *United States v. New River Co.*, 265 U. S. 533, 542. Nor will the court "examine the facts further than to determine whether there was substantial evidence to sustain the order." *Interstate Com. Com. v. Union Pacific*, 222 U. S. 541, 548. As pointed out by this court, in *Virginian Ry. Co. v. U. S.*, 272 U. S. 658, at 665:

> The finding of reasonableness, like that of undue prejudice, is a determination of a fact by a tribunal "informed by experience." *Illinois Central Railroad Co. v. Interstate Commerce Commission*, 206 U. S. 441, 454.
>
> This court has no concern with the correctness of the Commission's reasoning, with the soundness of its conclusions, or with the alleged inconsistency with findings made in

other proceedings before it. *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541.

As we have pointed out, appellants were given a full hearing by the Commission on the questions at issue before it. In accordance with its established practice in such cases, the Commission permitted appellants, as well as interested shippers, communities, and localities, to participate in the hearings; and appellants were represented by counsel and took a prominent part in the proceedings. That counsel was permitted to introduce whatever relevant evidence he wished bearing upon the subject matter; to cross-examine witnesses; to make objections to questions; to file briefs; and to participate in the oral argument before the Commission at Washington, causing the Commission in its report of July 19, 1926, to say:

> The State commissions of Alabama, Georgia, Florida, Mississippi, Kentucky, and North Carolina were represented at the hearings, and they took an active and helpful part in developing the record. (R. 37.)

The various hearings accorded by the Commission constituted a full hearing. As stated in the *New England Divisions Case*, 261 U. S. 184, 200:

> A full hearing is one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of the step asked to be taken.

And in the same case, at page 201, the court said:

> A hearing may be a full one, although the evidence introduced does not enable the tribunal to dispose of the issues completely or permanently; and although the tribunal is convinced, when entering the order thereon, that, upon further investigation, some change in it will have to be made.

The step proposed to be taken by the Commission in this proceeding, as clearly shown by its order instituting the general investigation, was

> * * * into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the charges resulting therefrom, applicable between points in the territory described in the next following paragraph, with a view to determine whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises.

Under Section 13 (4) of the Interstate Commerce Act it is made the duty of the Commission where it finds undue or unreasonable preference, prejudice, or discrimination against interstate commerce, caused by the lower intrastate rates (as it did in this proceeding, 113 I. C. C. 389, at 435) (R. 96), to

> prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, * * *

in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination.

Under this provision of law it is undoubted that the Commission could have, in its order of July 19, 1926, required the removal of the unjust discrimination against interstate commerce and the undue prejudice to persons and localities in interstate commerce found by it to exist due to the maintenance of intrastate rates in Alabama on a lower basis than the corresponding interstate rates it found reasonable therein. Instead, however, the Commission left it to the Alabama authorities to "cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment." (R. 97.) The failure of the Commission to exercise at that time the full power conferred upon it by the statute is not to be construed as an admission against it that it lacked that power, especially when it had before it the suggestion of this court in the *Wisconsin case, supra*, at page 591, that—

> * * * when the state commissions shall recognize their obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate rates, conference between the Interstate Commerce Commission and the state commissions may dispense with the necessity for any rigid federal order as to the intrastate rates, and leave to the state commissions power to deal

with them and increase them or reduce them in their discretion.

The Commission had a right to assume that the Alabama Commission would remove the undue prejudice and discrimination found by it to exist and that it would not be necessary to do more in the premises.

The claims of appellants that the Commission's action was beyond the issues and that they were not accorded a full hearing are without merit.

Furthermore, this is the same order that was before this Court on appeal from the decree dismissing the interlocutory injunction. On that occasion this Court held that the order involved was one within the "general powers" of the Commission, and was made after "full inquiry." (*Alabama* v. *United States*, 279 U. S. 229.)

V. In prescribing a single-line scale of rates for both single and joint line hauls the Commission's action was justified and was not arbitrary in character

Under date of March 9, 1925, before any hearings had been held in this proceeding, a notice (R. 207) signed by Commissioner Eastman, in charge of the case, was issued to all interested parties, stating in a general way what would be expected to be developed at the hearings, and, among other things, appears the following:

12. What, if any, should be the differentials between single-line and joint-line rates? (R. 210.)

In its report the Commission discussed the advantages to be gained by having one scale of rates, applicable for joint-line and for single-line hauls. The court is referred to this discussion (R. 76–77) for the Commission's view in the premises.

The fact that both carriers and shippers proposed arbitraries to be used in constructing joint-line rates is unimportant. The Commission's notice of March 9, 1925, above referred to, invited the introduction of evidence as to what differentials, if any, should obtain between joint-line and single-line rates. (R. 210.)

Pertinent evidence submitted to the Commission on this point includes: Testimony showing that Class I roads in southern territory proposed to shippers a scale of rates to apply uniformly for single and joint-line hauls (R. 252); a scale of rates proposed by the freight Traffic Manager, L. & N. R. R., the joint-line rate under this proposed scale being generally 34 cents higher than the single-line rate (R. 262); exhibit 155, showing rates on fertilizer, carloads, between points in the state of Mississippi, which are generally applied for single-line movement throughout the State (R. 377); testimony showing rates between various points and whether single or joint-line hauls were used (R. 421–2); exhibit 158, showing rates, carloads, proposed by the Alabama carriers for single-line application on fertilizer, in effect prior to July 25, 1924 (R. 446); exhibit 157, showing the scales of

rates prescribed by the Alabama Commission for single and joint-line application over the so-called standard roads operating within that State (R. 445); exhibit 164, comparing interstate rates on fertilizer from manufacturing points in Alabama for single-line application up to 200 miles from the manufacturing points, with the rates on basis of the Alabama Commission's scale and on basis of the third Royster scale (R. 452); testimony to the effect that by far the bulk of the fertilizer traffic in Georgia moves over a single-line scale (R. 499); exhibit 212, showing present and proposed local mileage single-line rates on fertilizer between points in Florida as compared with the proposed Royster scale (R. 516); and exhibit 243, showing present rates, carloads, on fertilizer, for single-line application, as now effective between points in North Carolina intrastate as well as between points in Virginia intrastate (R. 563). Further, the Commission, in its report of July 19, 1926, concerning fertilizer rates in official territory, said:

> The joint-line rates in this territory are on the same level as the single-line rates. (R. 45.)

This court in *Int. Com. Com.* v. *Union Pac. R. R. Co.*, 222 U. S. 541, used pertinent language in this connection when it said at page 550:

> With that sort of evidence before them, rate experts of acknowledged ability and fairness, and each acting independently of

the other, may not have reached identically the same conclusion. We do not know whether the results would have been approximately the same. For there is no possibility of solving the question as though it were a mathematical problem to which there could only be one correct answer. Still there was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's finding on such facts conclusive. * * *

The above is directly contrary to the allegation (R. 14) that there was no evidence upon which the Commission could properly base a single scale applicable both to single-line and multiple-line hauls.

VI. The contention that the Commission acted arbitrarily in ordering fixed maximum and minimum rates in Alabama while permitting the carriers to regard the interstate rates as but maximum rates is without merit

In prescribing the mileage scale for interstate application, the Commission fixed rates of "not to exceed" those designated in the scale, i. e., maximum rates, but there is no restriction upon the carriers from putting in lower rates if they so desire. (R. 112–17.) The intrastate rates the Commission is requiring the carriers to put in effect in Alabama are rates "which shall not be less, for corresponding distances, than the rates contemporaneously applied by said carriers" under the order of July 19, 1926. (R. 24.) In other words, the same rates are to be applied intrastate as in-

terstate, for corresponding distances, and if the carriers establish lower rates for interstate application than the maximum prescribed in the order of July 19, those lower rates must also be established for intrastate application.

The petition, paragraph 27 (g) (R. 15), states that the interstate rates prescribed by the Commission are "subject to exceptions and deviations at the will of the carriers" when as a matter of fact the order of July 19 permits the carriers to "use groups of moderate extent" *"subject to the approval of the Commission."* (R. 113.) This gives the State ample opportunity to object to any "deviations" from the Commission's order.

CONCLUSION

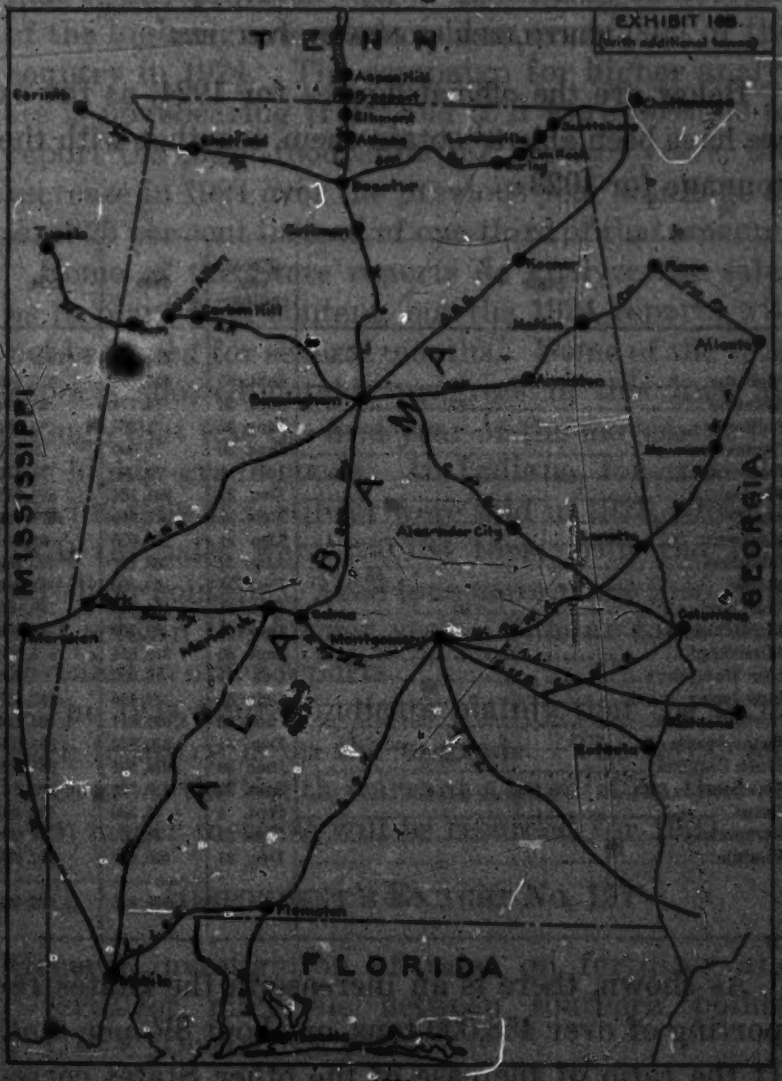
Between the date of the Interstate Commerce Commission's report of July 19, 1926, and its order of October 3, 1927, the Alabama Commission had over 14 months in which to remove the unjust discrimination and undue prejudice against interstate commerce found to exist before there was a "rigid federal order" issued. Given ample opportunity to act in line with the Commission's finding, and not having done so, it became then the duty of the Commission to remove the unjust discrimination against interstate commerce found by it to exist, which it did by the promulgation of its order of October 3, 1927.

The decision of the lower court dismissing the bill of complaint should be affirmed.

E. M. REIDY,
Assistant Chief Counsel,
Interstate Commerce Commission.

DANIEL W. KNOWLTOWN,
Chief Counsel,
Interstate Commerce Commission,
Of Counsel.

APPENDIX



RESPONDENT'S EXHIBIT No. 35

I. C. C. Docket No. 16295. Witness Gardner

[Extract from the American Fertilizer Magazine of February 7, 1925]

FERTILIZER TONNAGE FOR 1924

Below are the official figures for 1924, as far as we have been able to obtain them, together with the tonnage for 1923:

State	Fiscal year ending—	1923	1924
		Tons	Tons
Alabama	Sept. 30	436,786	472,240
Arkansas	Sept. 30	74,774	85,000
California	June 30	71,364	66,661
Connecticut	June 30	75,000	78,000
Delaware	July 1	40,000	37,180
Florida	Dec. 31	291,594	305,317
Georgia	Dec. 31	675,849	675,000
Kentucky	Dec. 31	90,000	85,000
Louisiana	Aug. 31	108,711	120,720
Maine	Dec. 31	168,000	182,000
Maryland	Dec. 31	154,645	150,000
Massachusetts	July 1	83,700	81,000
Mississippi	Sept. 30	315,854	316,000
New Hampshire	Oct. 31	16,000	16,000
New Jersey	Oct. 31	137,426	163,417
North Carolina	June 30	1,061,811	1,120,314
Pennsylvania	Dec. 31	570,560	526,000
South Carolina	June 30	678,396	691,369
Tennessee	June 30	113,720	105,417
Texas	Sept. 1	79,300	120,180
Vermont	June 30	18,000	18,000
Virginia	Dec. 31	420,897	441,895
		5,455,845	5,666,341

As shown, there is an increase in the States reporting of over 458,000 tons, or about 8½ per cent. If the ratio of increase of the other States corre-

sponds with those so far reporting, the total tonnage for 1924 will be over 7,000,000 tons.

Any comparison between last year's tonnage and that of any previous year is misleading on account of the higher-grade goods sold in every part of the country in 1924. The campaign for higher analyses is now bearing fruit, and if it were possible to report the plant-food units for the two years, the increase in 1924 over the previous year would be at least 25 per cent instead of one-third of that amount.

Some of the State reports do analyze the sales as to plant-food content, but the 1924 reports will not be issued for several months. Some of the 1923 reports showed notable progress in this line, although that was the first year of the movement for the higher-grade goods. In Indiana, for example, 195,702 tons of fertilizer were sold in 1923, while in 1920 the sales were 230,184 tons. But the 1923 fertilizer contained 2,238 tons more plant food than that sold in the former year. Similar facts were revealed in other reports.

The 1924 figures indicate plainly that the fertilizer industry is on the upgrade. The latest advices from the South warrant a prediction that an even larger increase will be recorded for 1925.

RESPONDENT'S EXHIBIT No. 157

General investigation of rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket No. 16295.

Statement of the rates on fertilizer, carload, prescribed by the Alabama Public Service Commission in Docket No. 1136 of May 26, 1924, for application in connection with following lines: A. G. S. R. R., A. B. & A. Ry., A. C. L. R. R., B. & O. R. R., C. of Ga. Ry., L. & N. R. R., M. & O. R. R., N. C. & St. L. Ry., N. A. Ry., St. L. S. F. Ry., S. A. L. Ry., Sou. Ry., W. Ry. of Ala

Distance	Single line	Joint line
5 miles and under	80	
10 miles and over 5	90	130
15 miles and over 10	100	130
20 miles and over 15	110	140
25 miles and over 20	120	150
30 miles and over 25	130	160
35 miles and over 30	130	160
40 miles and over 35	130	160
45 miles and over 40	140	170
50 miles and over 45	145	175
55 miles and over 50	150	
60 miles and over 55	155	
65 miles and over 60	160	190
70 miles and over 65	165	195
75 miles and over 70	170	200
80 miles and over 75	175	205
85 miles and over 80	180	210
90 miles and over 85	185	215
95 miles and over 90	190	220
100 miles and over 95	195	225
110 miles and over 100	205	235
120 miles and over 110	215	245
130 miles and over 120	225	255
140 miles and over 130	235	265
150 miles and over 140	245	275
160 miles and over 150	255	285
170 miles and over 160	265	295
180 miles and over 170	275	305
190 miles and over 180	285	315
200 miles and over 190	295	325
210 miles and over 200	305	335
220 miles and over 210	315	345
230 miles and over 220	325	355
240 miles and over 230	335	365
250 miles and over 240	345	375
260 miles and over 250	355	385
270 miles and over 260	365	395
280 miles and over 270	375	405
290 miles and over 280	385	415
300 miles and over 290	395	425
310 miles and over 300	405	435
320 miles and over 310	415	445
330 miles and over 320	425	455
340 miles and over 330	435	465
350 miles and over 340	445	475
360 miles and over 350	455	485
370 miles and over 360	465	495
380 miles and over 370	475	505
390 miles and over 380	485	515

L. & N. R. R. Traffic Department.

L. & N. R. R. Traffic Department, March 27, 1925. T. R. H.

Respondent's Exhibit No. 156

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket No. 16295.

Statement of the rates on fertilizer, carload, (a) on basis of Alabama scale in effect prior to July 25, 1924 (effective date of order of Alabama Public Service Commission in Docket 4136 (b) on basis of Alabama lines proposed scale submitted in A. P. S. C. Docket 4136 (c) on basis of third Royster Scale (50 I. C. C. 34) (d) on basis of Alabama prescribed scale in A. P. S. C. Docket No. 4136.

(Single-line scale)

Miles	Alabama scale in effect prior to July 25, 1924	Alabama lines proposed scale A.P.S.C. Docket 4136	Third Royster scale	Alabama (prescribed scale (present scale) A.P.S.C. Docket 4136
5	88	90	90	88
10	102	108	102	99
15	113	126	124	109
20	115	135	135	119
25	126	144	147	130
30	134	153	158	138
35	135	162	168	150
40	135	171	169	155
45	147	180	180	160
50	155	189	190	165
55	158	198	199	170
60	169	207	208	175
65	169	216	205	180
70	180	216	214	185
75	180	225	214	170
80	192	225	225	175
85	203	234	237	180
90	203	234	237	185
95	214	243	248	190
100	214	243	259	195
110	225	252	259	205
120	237	261	270	215
130	259	270	270	226
140	270	279	292	235
150	282	288	303	245
160	293	297	313	255
170	293	306	315	265
180	304	315	327	275
190	304	324	337	286
200	315	[illegible]	338	295
210	315	[illegible]	348	305
220	327	351	349	315
230	[illegible]	360	360	325
240	338	369	372	335
250	340	378	372	345
260	340	387	383	355

Statement of the rates on fertilizer, etc.—Continued

Miles	Alabama scale in effect prior to July 20, 1934	Alabama lines proposed scale A.P.S.C. Docket 4126	Third Royster scale	Alabama prescribed scale (present scale) A.P.S.C. Docket 4126
370	396	401	383	365
380	399	401	394	345
390	372	414	405	375
400	383	414	405	375
410	394	426	428	385
420	405	426	428	395
430	417	441	439	405
440	428	441	439	405
450	439	455	450	405
460	439	455	450	405
470	439	468	462	415
480	462	468	462	415
490	462	482	494	425
500	462	482	494	425
510	473	495	495	435
520	473	495	495	435
530	473	509	507	445
540	484	509	507	455

L. & N. R. R. Traffic Department, April 16, 1935. T. E. H.

Respondent's Exhibit No. 164

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket 16295.

Statement showing local scale rates on fertilizer of southeastern lines shown compared with the single-line Alabama and third Royster scales (50 I. C. C. 34)

Miles	A. C. L. R. R.		A. B. & A. Ry., note 3	A. G. S. R. R., note 4	C. of Ga. Ry.			C. N. O. & T. P. Ry., note 6	G. A. L. Ry., note 9	L. & N. R. R., note 10	Southern Ry., note 11	A. & W. P. Ry., Ga. E. R., note 12	Prescribed by A. P. S. C. in Docket 4126	Third Royster scale
	Note 1	Note 2			Note 5	Note 6	Note 7							
1	102	147	102	102	102	66	157	90	113	90	66	66	90	90
10	113	147	124	102	113	102	157	90	113	90	102	66	95	102
15	124	147	135	113	124	113	169	102	147	112	113	113	100	124
20	147	147	147	147	147	113	180	102	147	147	113	113	110	135
25	158	169	158	169	169	124	214	113	169	147	124	124	120	147

Statement showing local scale rates on fertilizer, etc.—Continued

Miles	A. C. L. R. R.		A. B. & A. Ry., note 3	A. G. S. R. R., note 4	C. of Ga. Ry.			C. N. O. & T. P. Ry., note 5	S. A. L. Ry., note 6	L. & N. R. R., note 10	Southern Ry., note 11	A. & W. P. Ry., Ga. R. R., note 12	Prescribed by A. S. C. in Docket 4180	Third Section rate
	Note 1	Note 2			Note 5	Note 6	Note 7							
50	100	100	100	105	100	124	214	113	100	100	124	124	125	105
60	100	100	100	105	100	125	225	147	100	100	125	125	120	105
70	102	102	102	100	102	125	225	147	100	100	125	125	125	105
80	208	214	208	100	208	147	227	160	208	208	147	125	140	105
90	208	214	208	100	208	155	227	160	208	208	155	155	145	105
100	214	226	214	105	214	155	230	208	214	208	155	155	150	105
110	214	226	214	208	214	169	240	208	214	208	169	155	155	208
120	226	237	226	214	214	169	250	226	226	208	169	169	160	208
130	226	237	226	214	214	169	250	226	226	226	169	169	165	214
140	237	237	237	214	237	180	262	226	237	226	169	169	170	214
150	237	237	237	226	237	192	262	226	237	226	192	192	175	226
160	237	237	250	237	237	203	262	250	250	226	203	203	180	237
170	248	248	250	237	248	203	262	250	250	250	203	203	185	237
180	248	248	270	248	248	214	262	250	250	250	214	214	190	248
190	250	250	270	250	250	214	262	250	250	250	214	214	195	250
200	250	250	282	270	270	225	304	250	270	250	225	225	205	250
210	270	270	282	282	270	237	315	250	270	250	237	237	215	250
220	282	282	296	293	270	250	315	250	282	250	250	250	225	270
230	282	282	304	304	282	270	327	250	282	250	270	270	235	282
240	282	282	315	315	282	282	338	250	304	250	282	282	245	282
250	282	282	315	315	282	282	340	250	315	250	282	282	255	315
260	315	315	327	315	315	293	350	250	315	250	293	293	265	315
270	327	327	327	327	315	304	372	270	327	250	304	304	275	327
280	327	327	327	327	315	304	372	270	327	250	304	304	275	327
290	327	327	338	338	327	304	372	270	327	282	304	304	285	327
300			340	340	327	315	383	282		282	315	315	295	338
305			340	340	338	315	383	293		315	315	315	305	340
310			340	340	338	315	383	293		315	315	315	305	340
320			340	340	340	327	394	293		315	327		315	340
325			372	340	340	338	405	305		327	338		325	340
330			372	340	340	338	405	293		338	338		325	340
335			372	340	350	338	417	304		338	338		335	372
340			372	340	350	338	417	304		338	338		335	372
345			383	340	372	340	428	304		338	340		345	372
350			383	340	372	340	428	315		338	340		345	372
360			383	340	372	340	439	315		340	340		355	383
370			394	340	383	350	439	315		340	350		365	383
375			394	340	383	350	450	315		340	350		365	394
380			394	340	383	360	450	327		340	360		365	394
390			405	340	394	372	450	327		340	372		375	405
395			417	340	405	383	450	327		350	383		375	405
400			428		417	394	484	327		372	394		385	439
410			428		417	394	484	338		372	394		385	439
420			428		428	405	484	338		372	405		395	439
430			439		428	417	484	349		372	417		395	439
440			439		428	417	484	349		383	417		395	439
450			450		439	428	484	349		383	428		395	439
460			450		439	439	495			383	439		405	439

Statement showing local scale rates on fertilizer, etc.—Continued

Miles	A. C. L. R. R. Note 1	A. C. L. R. R. Note 2	A. D. & A. Ry., note 3	A. G. S. R. R., note 4	C. of Ga. Ry. Note 5	C. of Ga. Ry. Note 6	C. of Ga. Ry. Note 7	C. N. O. & T. P. Ry., note 8	G. A. L. Ry., note 9	L. & N. R. R., note 10	Southern Ry., note 11	A. & W. P. Ry., Ga. R. R., note 12	Prescribed by A. C. C. in Docket 418	Third Rayner scale
260			466		465	439	397			394	439		405	439
270			466		467	439	397			394	439		415	448
280			473		473	462	397			394	462		415	448
290			484		479	462	845			394	462		425	458
300			484		484	462	845			394	462		425	458
310			496			473	863			405	473		435	468
320			496			473	863			405	473		435	468
330			137			473	863			405	473		445	487
340			518			484	863			436	486		445	487
350			518			484	897			466			455	502
360			539			484	897			466			455	502
370						484	919			466			465	502
380						484	919			466			465	502
390													475	502
400													475	502
410													485	502
420													485	502

NOTE 1.—Applicable on traffic between A. C. L. R. R. stations in Alabama.

NOTE 2.—Applicable between A. C. L. R. R. stations in Alabama and A. C. L. R. R. stations in Georgia (Bainbridge, Ga., and West).

NOTE 3.—Applicable from stations in Alabama to stations in Georgia, from stations in Georgia to stations in Alabama.

NOTE 4.—Applicable only on interstate traffic between points on the A. G. S. R. R.

NOTE 5.—Applicable locally between Birmingham, Childersburg, Sylacauga, Opelika Montgomery, Union Springs, Eufaula, Columbia, Dothan, Sampson, Lockhart, Paxton, and Florida, Ala., and Columbus, Ga., and stations in Alabama.

NOTE 6.—Applicable between all stations in Georgia between stations in Georgia and Columbia and Eufaula, Ala., and between Columbia, Ala., and Eufaula, Ala.

NOTE 7.—Applicable between Columbus, Ga., Eufaula, Ala., and Columbia, Ala., and Central of Georgia stations in Alabama, Florida, Georgia, and Tennessee.

NOTE 8.—Applicable between all stations on the C. N. O. & T. P. Ry.

NOTE 9.—Applicable between G. A. L. Ry. stations on Atlanta, Birmingham and Savannah division in Alabama, Georgia, North and South Carolina.

NOTE 10.—Applicable between points south of Ohio River (except Virginia Intrastate and F. & A. division traffic).

NOTE 11.—Applicable on interstate traffic between points in Georgia.

NOTE 12.—Applicable on interstate traffic between points on A. & W. P. R. R. and between points on the Georgia R. R.

Tariff supervision.—A. C. L. R. R. Alabama Local No. 2, I. C. C. B-2000; A. C. L. R. R. Alabama-Georgia Interstate No. 6, I. C. C. B-2007; A. B. & A. Ry. Tariff No. 57-C, I. C. C. 277; A. G. S. R. R. Local No. 1211-D, I. C. C. 1330; Central of Georgia Mileage No. 3, I. C. C. 2417; Central of Georgia Interstate Mileage No. 7, I. C. C. 2415; Central of Georgia Mileage No. 4, I. C. C. 2432; C. N. O. & T. P. Ry. Local 1230-D, I. C. C. 4340; G. A. L. Ry. Interstate Local No. 3, I. C. C. A-6976; Southern Ry. Georgia Local No. 1, I. C. C. A-6979; A. & W. P. R. R. Tariff 1303-C, I. C. C. A-61.

L. & N. R. R. TRAFFIC DEPARTMENT, April 16, 1920. C. T. M.

Respondent's Exhibit No. 170

General investigation of rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket No. 16295.

Statement of the rates on fertilizer, carload, and on basis of third Royster scale (50 I. C. C. 34) from Decatur, Ala., to Southern Ry. agency stations Gurley, Ala., to Stevenson, Ala., inclusive, compared with the rates from Chattanooga to the same stations

From Decatur, Ala., to—	Miles	Present rate	Third Royster scale	From Chattanooga, Tenn., to—	Miles	Present rate	Third Royster scale
Southern Ry. stations				Southern Ry. stations			
Gurley, Ala.	41	140	180	Stevenson, Ala.	39	130	169
Jacobs Spur Ala.	42	140	180	Cedar Grove, Ala.	42	130	180
Paint Rock, Ala.	42	140	180	Fackler, Ala.	43	130	180
Paint Rock Bridge	42	140	180	Hollywood, Ala.	45	130	182
Woodville, Ala.	44	145	180	Scottsboro, Ala.	56	210	293
Stevens Gap, Ala.	54	150	192	Larkinsville, Ala.	60	170	168
Lim Rock, Ala.	55	155	203	Lim Rock, Ala.	65	220	284
Larkinsville, Ala.	60	150	203	Stevens Gap, Ala.	65	220	284
Scottsboro, Ala.	66	165	214	Woodville, Ala.	72	220	284
Hollywood, Ala.	71	170	214	Paint Rock Bridge	74	220	284
Fackler, Ala.	77	175	.....	Paint Rock, Ala.	77	220	284
Cedar Grove, Ala.	80	175	225	Jacobs Spur, Ala.	78	220	285
Stevenson, Ala.	82	180	227	Gurley, Ala.	81	220	287

Tariff authorities.—Agent Glenn's I. C. C. A-478; Southern Ry. I. C. C. A-9480.

L. & N. R. R. Traffic Department, April 10, 1935. W. E. H.

Respondent's Exhibit No. 173

General investigation of rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket 16295.

Statement showing the present rates on fertilizer, carload, also on basis of Third Royster Scale (66 I. C. C. 34) from Birmingham, Ala., to Atlanta, Ga., and intermediate agency stations on the Southern Ry., compared with similar rates from Atlanta, Ga., to Birmingham, Ala., and intermediate agency stations on the Southern Ry.

From Birmingham, Ala., to—	Miles	Present rate	Third Royster scale	From Atlanta, Ga., to—	Miles	Present rate	Third Royster scale
Southern Ry. stations				*Southern Ry. stations*			
Avondale, Ala.	2	80	90	Chattahoochee, Ga.	8	102	102
Woodlawn, Ala.	3	80	90	Mableton, Ga.	15	112	126
Irondale, Ala.	6	96	102	Austell, Ga.	18	113	126
Leeds, Ala.	18	110	126	Lithia Springs, Ga.	21	113	147
Brompton, Ala.	20	120	147	Douglasville, Ga.	27	126	168
Eden, Ala.	22	120	168	Winston, Ga.	33	126	168
Fell City, Ala.	25	120	168	Villa Rica, Ga.	36	126	189
Riverside, Ala.	40	126	189	Temple, Ga.	44	147	189
Lincoln, Ala.	46	140	189	Bremen, Ga.	53	156	189
Eastaboga, Ala.	51	150	192	Waco, Ga.	56	156	252
Bynum, Ala.	57	150	192	Tallapoosa, Ga.	68	160	252
Anniston, Ala.	63	160	208	Muscadine, Ala.	70	235	314
De Armanville, Ala.	71	170	214	Fruit Hurst, Ala.	73	237	314
Choccoloco, Ala.	74	170	214	Edwardsville, Ala.	76	237	235
Iron City, Ala.	77	175	235	Heflin, Ala.	84	239	237
Heflin, Ala.	83	185	237	Iron City, Ala.	89	239	237
Edwardsville, Ala.	90	185	237	Choccoloco, Ala.	92	239	248
Fruit Hurst, Ala.	94	190	248	De Armanville, Ala.	93	239	259
Musscadine, Ala.	97	195	259	Anniston, Ala.	104	268	259
Tallapoosa, Ga.	104	202	259	Bynum, Ala.	113	270	270
Waco, Ga.	111	215	270	Eastaboga, Ala.	118	282	270
Bremen, Ga.	114	215	270	Lincoln	122	282	270
Temple, Ga.	123	215	270	Riverside, Ala.	137	282	270
Villa Rica, Ga.	129	234	270	Fell City, Ala.	139	282	282
Winston, Ga.	136	261	282	Eden, Ala.	194	282	282
Douglasville, Ga.	140	262	282	Brompton, Ala.	144	282	282
Lithia Springs, Ga.	143	262	282	Leeds, Ala.	[illegible]	282	282
Austell, Ga.	[illegible]	262	282	Irondale, Ala.	161	314	315
Mableton, Ga.	68	262	315	Woodlawn, Ala.	164	314	315
Chattahoochee, Ga.	180	314	315	Avondale, Ala.	165	314	315
Atlanta, Ga.	187	314	315	Birmingham, Ala.	187	314	315

Tariff authorities.—Southern Ry. I. C. C. Nos. A-9461 and A-9606; Agent J. H. Glenn's I. C. C. No. A-478.

L. & N. Traffic Department, *April 19, 1926.* W. E. H.

Respondent's Exhibit No. 174

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket 16295.

Statement showing the present rates on fertilizer, carload, also on basis of third Royster scale (50 I. C. C. 32), from Montgomery, Ala., to Richland, Ga., and intermediate agency stations on the Southern Ry. Line Ry., compared with similar rates from Richland, Ga., to Montgomery, Ala., and intermediate agency stations on the Southern Ry. Line Ry.

From Montgomery, Ala., to—	Miles	Present rate	Third Royster scale	From Richland, Ga., to—	Miles	Present rate	Third Royster scale
S. A. L. Ry. stations				*S. A. L. Ry. stations*			
Ozell, Ala.	20	110	125	Lumpkin, Ga.	6	80	105
Chesson, Ala.	25	130	147	Leavells, Ga.	14	80	115
Hardaway, Ala.	30	135	138	Union, Ga.	20	80	115
Fort Davis, Ala.	35	135	139	Omaha, Ga.	27	110	115
Hobe, Ala.	40	140	139	Cusseta, Ala.	31	110	115
Hannon, Ala.	40	145	139	Pittsview, Ala.	37	110	115
Shirleys, Ala.	45	145	139	Smithland, Ala.	40	110	115
Sutherlin, Ala.	48	150	139	Hurtsboro, Ala.	44	110	115
Fairview, Ala.	73	170	214	Shorter, Ala.	48	110	115
Cottonton, Ala.	76	175	139	Hobe, Ala.	55	110	115
Omaha, Ga.	88	210	257	Fort Davis, Ala.	71	110	115
Union, Ga.	99	240	257	Hardaway, Ala.	80	110	115
Leavells, Ga.	94	230	243	Chesson, Ala.	85	110	115
Lumpkin, Ga.	107	260	243	Ozell, Ala.	90	110	115
Richland, Ga.	113	275	279	Montgomery, Ala.	113	215	215

Serial authorities.—S. A. L. Ry. I. C. C. Nos. A-6210, A-6211, A-6212, and A-6213.
S. A. & N.-B. R. Tariff Bureau Concurrences; Serial No. 12.

W. & D.

Commissioner's Exhibit No. 175

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket 16295.

Statement showing the present rates on fertilizer, carload, also on basis of third Rate per scale (50 I. C. C. 34) from Montgomery, Ala., to Columbus, Ga., and intermediate stations on the Central of Georgia Ry., compared with similar rates from Columbus, Ga., to Montgomery, Ala., and intermediate stations on the Central of Georgia Ry.

From Montgomery, Ala., to—	Miles	Present rate	Third Rate per scale	From Columbus, Ga., to—	Miles	Present rate	Third Rate per scale
C. of Ga. Ry. stations				C. of Ga. Ry. stations			
Kayton, Ala.	6	$6	$6	Girard, Ala.	1	10¢	$6
Dingley, Ala.	9	6	6	Fontaine, Ala.	3	1 75:2	6
Ramsdins, Ala.	10	6	6	Knobs, Ala.	4	102	6
Perrys Mill, Ala.	12	102	102	Division, Ala.	5	102	6
Pike Road, Ala.	15	102	102	Brick Yard, Ala.	6	113	102
London, Ala.	18	113	102	Fleetwood, Ala.	6	113	102
Mathews, Ala.	21	126	102	Tiddow, Ala.	9	113	102
Mitchell, Ala.	23	126	102	Fort Mitchell, Ala.	10	113	102
Fitzpatrick, Ala.	25	126	102	Mitchell, Ala.	12	126	102
Thompson, Ala.	27	126	102	Lula, Ala.	13	126	126
Union Springs, Ala.	29	126	102	Smiley, Ala.	15	126	126
Chunnenuggee, Ala.	32	126	102	Dudleys, Ala.	20	147	126
Fountain, Ala.	37	147	102	Colbert, Ala.	23	147	126
Shorterville, Ala.	40	147	102	Shorterville, Ala.	24	147	126
Tuskegee, Ala.	41	147	102	Tuskegee, Ala.	25	147	126
Notasulga, Ala.	45	147	102	Notasulga, Ala.	29	147	126
Tuskegee, Ala.	47	147	102	Tuskegee, Ala.	31	147	126
Shorterville, Ala.	52	147	102	Shorterville, Ala.	36	147	126
Colbert, Ala.	54	147	102	Colbert, Ala.	38	147	126
Dudleys, Ala.	57	147	102	Dudleys, Ala.	41	147	126
Smiley, Ala.	62	147	102	Smiley, Ala.	46	147	126
Lula, Ala.	64	175	102	Lula, Ala.	48	147	126
Mitchell, Ala.	67	175	102	Mitchell, Ala.	50	147	126
Fort Mitchell, Ala.	68	175	102	Fort Mitchell, Ala.	51	147	126
Tiddow, Ala.	68	175	102	Tiddow, Ala.	51	147	126
Fleetwood, Ala.	68	175	102	Fleetwood, Ala.	51	147	126
Brick Yard, Ala.	68	175	102	Brick Yard, Ala.	51	147	126
Division, Ala.	69	175	102	Division, Ala.	52	147	126
Knobs, Ala.	71	175	102	Knobs, Ala.	54	147	126
Fontaine, Ala.	73	175	102	Fontaine, Ala.	56	147	126
Girard, Ala.	78	175	102	Girard, Ala.	61	147	126
Columbus, Ga.	79	175	102	Columbus, Ga.	62	147	126

[1] Rate published in W. R. per car of 24,000 pounds equals at proportionate rate and for the purpose of this statement converted to per ton basis.

Third authorities.—C. of Ga. Ry., I. C. C. No. 3551. Agent J. H. Glenn's I. C. C. No. A-473. L. & N. R. R. Traffic Department, March 30, 1926. L. & N. R. R. W. R. G. W. D. B.

Respondent's Exhibit No. 176

General investigation rates on fertiliser and fertiliser materials between southern points. I. C. C. Docket 16295.

Statement showing the present rates on fertilizer, carload, also on basis of third Royster scale (50 I. C. C. 34) from Decatur, Ala., to Corinth, Miss., and intermediate stations on the Southern Ry. compared with similar rates from Corinth, Miss., to Decatur, Ala., and intermediate stations on the Southern Ry.

From Decatur, Ala., to—	Miles	Present rate	Third Royster scale	From Corinth, Miss., to—	Miles	Present rate	Third Royster scale
Southern Ry. stations				Southern Ry. (Cont'd)			
Trinity, Ala.	6	90	102	Glenn, Miss.	8	105	102
Hillsboro, Ala.	13	100	124	Ocka, Miss.	11	110	124
Wheeler, Ala.	14	110	126	Burnsville, Miss.	14	110	124
Courtland, Ala.	20	110	126	Walker, Miss.	20	110	126
Town Creek, Ala.	26	120	147	Hazard, Miss.	26	105	126
Leighton, Ala.	28	120	126	Iuka, Miss.	28	105	147
Sheffield, Ala.	45	140	150	Gravel Siding, Miss.	28	105	147
Pride, Ala.	48	150	150	Oldham, Miss.	30	105	126
Boston, Ala.	55	150	203	Morrison, Miss.	37	105	126
Cherokee, Ala.	63	150	203	Riverton Junction, Ala.	50	150	126
Odum, Ala.	64	150	203	Margerum, Ala.	50	150	150
Margerum, Ala.	65	150	214	Odum, Ala.	64	150	150
Riverton Junction, Ala.	69	150	214	Cherokee, Ala.	50	150	203
Morrison, Miss.	71	200	214	Boston, Ala.	63	150	150
Oldham, Miss.	73	200	214	Pride, Ala.	65	150	150
Gravel Siding, Miss.	73	220	214	Sheffield, Ala.	68	210	150
Iuka, Miss.	73	220	226	Leighton, Ala.	65	210	203
Hazard, Miss.	80	220	226	Town Creek, Ala.	70	210	174
Walker, Miss.	83	220	237	Courtland, Ala.	76	220	226
Burnsville, Miss.	84	220	237	Wheeler, Ala.	83	220	237
Ocka, Miss.	87	220	237	Hillsboro, Ala.	85	220	237
Glenn, Miss.	89	220	237	Trinity, Ala.	93	220	203
Corinth, Miss.	98	220	250	Decatur, Ala.	98	220	237

Tariff authorities.—Southern Ry. I. C. C. Nos. A-9440 and A-9450. Agent J. H. Glenn's I. C. C. No. A-472.

L. & N. R. R. Traffic Department, March 30, 1922. W. E. G. W. D. B.

Respondent's Exhibit No. 177

General investigation rates on fertilizer and fertilizer material between southern points. I. C. C. Docket No 16295.

Statement showing the present rates on fertilizer, carload, also on basis of third Regster scale (50 I. C. C. 24) from Birmingham, Ala., to Tupelo, Miss., and intermediate agency stations on the St. Louis-San Francisco Ry., compared with similar rates from Tupelo, Miss., to Birmingham, Ala., and intermediate agency stations on the St. Louis-San Francisco Ry.

From Birmingham, Ala., to St. L.-S. F. Ry. stations	Miles	Rates	Third Regster scale	From Tupelo, Miss., to St. L.-S. F. Ry. stations	Miles	Rates	Third Regster scale
Adamsville, Ala.	33	102	124	Crowe, Ala.	80	210	190
Pelor, Ala.	30	110	133	Plantersville, Miss.	4	90	90
Quinton, Ala.	28	120	147	Nettleton, Miss.	13	120	104
Dora, Ala.	27	125	152	Amory, Miss.	20	200	147
Sumner, Ala.	26	125	152	Quincy, Miss.	23	190	152
Cordova, Ala.	23	130	152	Greenwood Springs, Miss.	26	210	152
Jasper, Ala.	41	140	152	Quinton, Miss.	41	200	152
Hillard, Ala.	46	140	152	Sulligent, Ala.	47	210	152
Townley, Ala.	48	150	152	Beaverton, Ala.	54	210	152
Carbon Hill, Ala.	60	155	203	Gein, Ala.	60	210	152
Eldridge, Ala.	63	165	254	Winfield, Ala.	67	210	254
Glen Allen, Ala.	73	170	254	Glen Allen, Ala.	73	210	254
Winfield, Ala.	79	175	254	Eldridge, Ala.	81	210	254
Gein, Ala.	86	185	254	Carbon Hill, Ala.	87	210	254
Beaverton, Ala.	88	190	254	Townley, Ala.	99	210	254
Crowe, Ala.	97	205	254	Hillard, Ala.	99	210	254
Sulligent, Ala.	105	205	254	Jasper, Ala.	105	210	254
Quinton, Miss.	105	210	254	Cordova, Ala.	118	210	254
Greenwood Springs, Miss.	110	210	254	Sumner, Ala.	118	210	254
Quincy, Miss.	110	210	254	Dora, Ala.	119	210	254
Amory, Miss.	125	210	254	Quinton, Ala.	124	210	254
Nettleton, Miss.	135	210	254	Pelor, Ala.	127	210	254
Plantersville, Miss.	149	210	254	Adamsville, Ala.	134	210	254
Tupelo, Miss.	167	210	254	Birmingham, Ala.	167	210	254

Tariff authorities.—St. L.-S. F. Ry. I. C. C. Nos. 8808 and 8819; St. L.-S. F. Ry. Tariff No. 28-I (Interstate); Agent F. H. Chase's I. C. C. No. A-478.

L. & N. R. R. Co. Traffic Department, *March 16, 1925.* W. D. B.

Respondent's Exhibit No. 178

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket 16295.

Statement of the rates on fertilizer, carload, from Mobile, Ala., v. Pensacola, Fla., to L. & N. R. R. stations Flomaton to Montgomery, Ala., inclusive (a) in effect prior to July 25, 1934 (effective date of Alabama Public Service Commission order in Docket 4158) (b) present rates and (c) on basis of third Regular scale (29 I. C. C. 34)

From— / To—	Distance		Rate prior to July 25, 1934		Present rates		Third Regular scale	
	Mobile	Pensacola	Mobile	Pensacola	Mobile	Pensacola	Mobile	Pensacola
L. & N. R. R. stations:								
Flomaton, Ala.	80	61	165	165	165	165	225	195
Pollard, Ala.	65	49	165	165	160	160	225	195
Herrington, Ala.	60	52	165	165	165	160	214	195
Keego, Ala.	60	52	165	165	165	160	214	195
Brewton, Ala.	73	57	165	165	170	160	214	195
Kirkland, Ala.	80	64	165	165	175	165	225	215
Castleberry, Ala.	87	71	215	215	185	175	237	214
Sparr, Ala.	93	77	214	214	190	214	248	248
Evergreen, Ala.	98	82	214	214	190	214	259	237
Owens, Ala.	102	86	225	225	205	225	259	237
Wilcox, Ala.	108	90	225	225	205	225	259	237
Garland, Ala.	113	95	237	237	215	237	270	259
Dunham, Ala.	118	100	237	237	215	237	270	259
Georgiana, Ala.	119	101	237	237	215	237	270	259
Chapman, Ala.	123	105	259	259	220	259	270	259
Bolling, Ala.	128	110	259	259	225	259	270	259
Wald, Ala.	130	113	259	259	245	259	270	270
Greenville, Ala.	134	118	270	259	235	259	282	270
Searcy, Ala.	141	126	282	259	245	259	294	270
Fort Deposit, Ala.	145	130	282	259	245	259	305	270
Calhoun, Ala.	151	135	282	259	255	259	315	282
Letohatchee, Ala.	155	143	282	259	255	259	315	282
Tyson, Ala.	162	147	282	259	255	259	315	282
Cloverfield, Ala.	164	149	282	259	275	259	315	282
McGehee, Ala.	169	153	282	259	285	259	315	315
Pauline, Ala.	173	157	304	259	275	259	327	315
Montgomery, Ala.	178	162	304	259	275	259	327	315

Suit outstanding—L. & N. R. R. C. F. C. S-B (Intermediate); L. & N. R. R. I. C. C. A-1758; Agent Glenn's I. C. C. A-476 (Intermediate); Agent F. L. Speidel's I. C. C. 288.

L. & N. R. R. Tariff Department, April 7, 1935. T. R. H.

Respondent's Exhibit No. 180

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket No. 16295.

Statement showing the present rates on fertilizer, carload, also on basis of third Royster scale (50 I. C. C. 34) from Eufaula, Ala., compared with similar rates from Columbus, Ga., to Montgomery, Ala., and intermediate stations on the Central of Georgia Ry.

From Eufaula, Ala., to Central of Georgia Ry. stations	Miles	Present rate	Third Royster scale	From Columbus, Ga., to Central of Georgia Ry. stations	Miles	Present rate	Third Royster scale
Logo, Ala.	7	89	103	Girard, Ala.	2	103	90
Batesville, Ala.	14	100	124	Fontaine, Ala.	3	1 75.2	90
Custer, Ala.	18	110	235	Kaolin, Ala.	4	103	90
Midway, Ala.	27	126	158	Dixieland, Ala.	5	113	90
Three Notch, Ala.	31	130	158	Brickyard, Ala.	6	113	103
Cedar Plains, Ala.	36	130	168	Flournoys, Ala.	8	113	103
Union Springs, Ala.	39	135	179	Tinklaw, Ala.	9	113	103
Thompson, Ala.	46	145	180	Fort Mitchell, Ala.	10	113	103
Fitzpatrick, Ala.	51	150	192	Nuckols, Ala.	12	124	124
Mitchell, Ala.	56	150	193	Lato, Ala.	15	126	124
Mathews, Ala.	59	155	203	Seale, Ala.	20	147	155
London, Ala.	61	160	203	Dudleys, Ala.	23	148	147
Pike Road, Ala.	65	160	203	Colbert, Ala.	24	160	147
Perrys Mill, Ala.	68	167	214	Hatchechubbee, Ala.	27	160	168
Barachias, Ala.	70	168	214	Wende, Ala.	30	160	168
Dingley, Ala.	76	175	225	Hurtsboro, Ala.	35	160	168
Kayton, Ala.	77	175	225	Teseo, Ala.	38	192	180
Montgomery, Ala.	80	180	225	Guerryton, Ala.	40	203	180
				Suspension, Ala.	43	203	180
				Peachburg, Ala.	49	214	180
				Chunnenuggee, Ala.	50	214	180
				Union Springs, Ala.	55	214	193
				Thompson, Ala.	62	214	203
				Fitzpatrick, Ala.	67	214	214
				Mitchell, Ala.	70	226	214
				Mathews, Ala.	75	237	214
				London, Ala.	77	237	225
				Pike Road, Ala.	80	237	225
				Perrys Mill, Ala.	84	237	237
				Barachias, Ala.	86	248	237
				Dingley, Ala.	92	248	248
				Kayton, Ala.	93	214	248
				Montgomery, Ala.	95	214	248

[1] Rate published as $7.5 per car of 20,000 pounds excess at proportionate rate and for purpose of this statement reduced to per ton basis.

Tariff authorities.—Cent. of Ga. Ry. I. C. C. No. 2499; Agent J. H. Glenn's I. C. C. No. 476.

Louisville & Nashville R. R. Co. Traffic Department, *March 9, 1925.*
T. B. H. W. B. G. W. D. B.

Exhibit No. 212

I. C. C. Docket No. 16295. Witness Ketner

Statement showing present and proposed local mileage (single line) rates on fertilizer and fertilizer materials between points in Florida, in cents per ton of 2,000 pounds

Distances, in miles	Present		Proposed	Distances, in miles	Present		Proposed
	Fertilizer, note 1	Fertilizer material, note 2	Fertilizer (carloads), minimum weight, 30,000 pounds		Fertilizer, note 1	Fertilizer material, note 2	Fertilizer (carloads) minimum weight 30,000 pounds
5	147	110	90	170	315	236	315
10	147	110	102	180	315	236	327
15	168	119	124	190	315	236	327
20	168	119	135	200	315	236	338
25	169	127	147	210	315	236	349
30	169	127	158	220	315	236	349
35	180	135	158	230	315	236	360
40	180	135	169	240	315	236	372
45	203	153	180	250	327	245	372
50	203	152	182	260	327	245	383
55	214	161	192	270	327	245	383
60	214	161	203	280	327	245	394
65	226	169	203	290	327	245	405
70	226	169	214	300	327	245	405
75	237	178	214	310	327	245	428
80	237	178	225	240	338	254	439
85	248	186	237	360	338	254	450
90	248	186	237	380	338	254	462
95	259	194	248	400	349	262	484
100	259	194	259	420	360	270	495
110	270	203	259	440	360	270	507
120	270	203	270	450	372	279	518
130	282	212	270	460	384	288	518
140	293	220	282	490	384	288	540
150	293	220	293	500	384	288	552
160	304	228	315	525	384	288	563

NOTE 1.—Fertilizer rated class "M" in Florida classification.

NOTE 2.—Fertilizer material rated 75 per cent of class "M" Florida classification minimum car 30,000 pounds.

S. A. L. Ry., I. C. C. No. A-7025.
NORFOLK, VA., *April 15, 1925.*

CARRIERS' EXHIBIT No. 243

I. C. C. Docket No. 16295. Witness, J. F. Dalton

NORFOLK SOUTHERN RAILROAD COMPANY

Statement showing the present rates on [illegible] carload of the Norfolk Southern R. R. for single line application, in cents per ton 2,000 pounds

Distances	Between points in North Carolina intrastate	Between points in Virginia intrastate	Interstate between points in North Carolina or Virginia, or vice versa	Royster scale
5 miles	99	102	125	1 [illegible]
10 miles	113	104	125	1 202
15 miles	126	124	152	1 [illegible]
20 miles	147	169	169	1 135
25 miles	169	214	169	1 117
30 miles	169	214	209	1 [illegible]
35 miles	169	214	214	[illegible]
40 miles	169	214	214	169
45 miles	193	214	214	169
50 miles	209	214	214	169
55 miles	214	214	214	197
60 miles	214	214	225	209
65 miles	225	214	237	209
70 miles	225	214	237	214
75 miles	237	214	248	214
80 miles	237	214	259	225
85 miles	248	214	259	237
90 miles	248	214	270	237
95 miles	259	214	270	248
100 miles	259	214	282	259
110 miles	259	214	293	259
120 miles	270	214	315	270
130 miles	270	214	315	270
140 miles	282	214	327	282
150 miles	293	214	327	293
160 miles	315	214	338	315
170 miles	315	214	349	315
180 miles	327	214	349	327
190 miles	327	214	360	327
200 miles	338	214	372	338
210 miles	349	214	372	349
220 miles	349	214	383	349
230 miles	360	214	383	360
240 miles	372	214	394	372
250 miles	372	214	406	372
260 miles	383	214	417	383
270 miles	383	214	417	383
280 miles	394	214	428	394

[1] Rates 20 miles and under are the proposed rates of other southern carriers.

Statement showing the present rates on fertilizer, carload, of the Norfolk Southern R. R. for single-line application, in cents per ton 2,000 pounds—Continued

Distance	Between points in North Carolina intrastate	Between points in Virginia intrastate	Interstate between points in North Carolina or Virginia, or vice versa	Bayster scale
300 miles	405	314	526	405
310 miles	405	314	526	405
320 miles	426	314	531	426
340 miles	426	314	531	426
360 miles	450	314	576	450
380 miles	465	314	576	465
400 miles	484	314	576	484
420 miles	495	314	576	495
440 miles	507	314	576	507
460 miles	519	314	576	519
480 miles	540	314	576	540
500 miles	552	314	576	552
525 miles	552	314	576	552
550 miles	552	314	576	574
575 miles	552	314	576	597
600 miles	552	314	576	620

Tariff authorities.—North Carolina Local Tariff No. 6, R. I. 100; Virginia Intrastate Tariff No. 3, R. I. 85; Interstate Local Tariff No. 5, I. C. C. A-300. 69-ICC. 24.

Exhibit No. 442

I. C. C. Docket 16295. Witness, Hayward

Comparison of rates on fertilizers from Meridian, Miss., to various points in Alabama and Georgia with rates from Montgomery, Ala., Atlanta, Ga., for shorter distances

From—	To—	Miles	Rate per ton
Meridian, Miss.	York, Ala.	27	150
Montgomery, Ala.	Hornaday, Ala.	27	154
Atlanta, Ga.	Lawrenceville, Ga.	25	135
Meridian, Miss.	Livingston, Ala.	28	175
Montgomery, Ala.	Casey	28	135
Atlanta, Ga.	Lawrenceville, Ga.	25	135
Meridian, Miss.	Beligee, Ala.	58	190
Montgomery, Ala.	Selma, Ala.	50	110
Atlanta, Ga.	Bremen, Ga.	58	185
Meridian, Miss.	Akron, Ala.	71	225
Montgomery, Ala.	Cusseta	77	180 (170)
Atlanta, Ga.	Rome, Ga.	73	190
Meridian, Miss.	Moundsville, Ga.	88	294
Montgomery, Ala.	Nelson, Ala.	83	208 (180)
Atlanta, Ga.	Macon, Ga.	86	203
Meridian, Miss.	Crabtree, Ala.	99	340
Montgomery, Ala.	Sylacauga, Ala.	96	180
Atlanta, Ga.	Anniston, Ala.	104	208
Meridian, Miss.	Tuscaloosa, Ala.	97	340
Montgomery, Ala.	Sylacauga, Ala.	96	180
Atlanta, Ga.	Anniston, Ala.	104	208
Meridian, Miss.	Jasper, Ala.	162	315
Montgomery, Ala.	Enterprise, Miss.	169	280
Atlanta, Ga.	Birmingham, Ala.	166	214
Meridian, Miss.	Leeds, Ala.	174	340
Montgomery, Ala.	Lauderdale, Miss.	172	280
Atlanta, Ga.	Augusta, Ga.	171	363
Meridian, Miss.	Pell City, Ala.	186	372
Montgomery, Ala.	Newton, Miss.	18[illegible]	315
Atlanta, Ga.	Cuthbert, Ga.	18[illegible]	338
Meridian, Miss.	Unionsprings, Ala.	2[illegible]6	382
Montgomery, Ala.	Macon, Miss.	203	330
Atlanta, Ga.	Whitehall, Ala.	200	400
Meridian, Miss.	Opelika, Ala.	230	380
Montgomery, Ala.	Pelahatchie, Miss.	223	336
Atlanta, Ga.	Tuscaloosa, Ala.	222	315
Meridian, Miss.	Jasper, Ala.	235	340
Montgomery, Ala.	State Line, Miss.	228	280
Atlanta, Ga.	Crabtree, Ala.	236	340
Atlanta, Ga.	Selma, Ala.	236	214
Meridian, Miss.	Eufaula, Ala.	245	380
Montgomery, Ala.	Brandon, Miss.	235	336
Atlanta, Ga.	Moundsville, Ala.	257	372
Meridian, Miss.	Cedartown, Ga.	269	340
Montgomery, Ala.	Purvis, Miss.	256	336

Comparison of rates on fertilizers from Meridian, Miss., to various points in Alabama and Georgia with rates from Montgomery, Ala., Atlanta, Ga., for shorter distances—Continued.

From—	To—	Miles	Rate per ton
Atlanta, Ga	Akron, Ala	305	320
Meridian, Miss	Americus, Ga	305	450
Montgomery, Ala	Latonia, Miss	305	340
Atlanta, Ga	York, Ala	291	340
Meridian, Miss	Atlanta, Ga	310	340
Montgomery, Ala	Aeru, Miss	325	400
Atlanta, Ga	Meridian, Miss	310	310
Meridian, Miss	Florala, Ala	345	437
Montgomery, Ala	Forest, Miss	340	327
Atlanta, Ga	Macon, Miss	341	384
Meridian, Miss	Elberton, Ga	435	488
Atlanta, Ga	Hillsdale, Miss	427	480

Tariff authorities, Southern Ry. Georgia Fertilizer Tariff 6, I. C. C. A-6928; A. & W. P. Fertilizer Tariff 1305-B I. C. C. 1145; Southern Ry. Tariff 1, I. C. C. A-6460; Alabama Great Southern, Tariff 1809-A, I. C. C. 1124.

Exhibit 500

I. C. C. Docket 16295. Witness, Bosley

Southern region, class one carriers (exclusive Pocahontas district) for calendar years ended December 31

	1923	1924	1925	1926 (first 6 months)
Property investment, including materials, supplies, and cash on hand	$2,570,404,981	$2,651,003,000	$2,761,451,000	
Tentative valuation, plus net additions since Jan. 1, 1920	2,174,784,000	2,280,474,000	[1] 2,310,995,000	
Property investment in excess tentative valuation plus net additions since Jan. 1, 1920	401,620,981	420,528,000	[1] 450,456,000	
Net railway operating income after deducting Federal income taxes	169,686,779	136,884,062	142,954,489	975,134,000
Rate of return on property investment after deducting Federal income taxes (per cent)	4.26	4.90	5.20	4.56
Rate of return on tentative valuation plus net additions since Jan. 1, 1920 after deducting Federal income taxes (per cent)	5.04	5.85	6.17	6 to 7
Net railway operating income before deducting Federal income taxes	$195,382,401	$146,971,065	$193,915,253	$93,290,000
Rate of return on tentative valuation plus net additions since Jan. 1920 (before deducting Federal income taxes) (per cent)	5.76	6.66	[1] 7.05	[1] 7 to 8
Fixed as fair rate of return by commission in reduced rates, 1922 (per cent)	5.75	5.75	5.75	5.75
Net railway operating income in excess of fair return of 5.75 per cent on tentative valuation, plus net additions since Jan. 1, 1920 (before deducting Federal income taxes)	$27,466	$30,696,510	$30,042,514	

[1] No carriers' figures available showing tentative valuation plus net additions since Jan. 1, 1920, as of Jan. 31, 1926. Those shown are arrived at by adding to tentative valuation figures plus net additions since Jan. 1, 1920, as of Jan. 31, 1922, same amount as carriers' property investment account increased 1924 over 1923.

NOTE.—Carriers continue to show their net railway operating income after deducting Federal income taxes and to show rate of return on book value or property investment. Commission declined to accept book value or property investment account as fair valuation in Ex Parte 74 and fixed tentative valuation much less for rate-making purposes. As to the impropriety of deducting Federal income taxes before arriving at net railway operating income and rate of return the Commission said in *Reduced Rates, 1922:*

"In our view railroad corporations should, like other corporations, pay their Federal income taxes out of the income rather than collect it, in effect, from the public in the form of transportation charges adjusted to enable it to retain the designated fair return over and above the tax."

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